

# Practical Business Negotiation

SECOND EDITION



William W. Baber and  
Chavi C-Y Fletcher-Chen



# PRACTICAL BUSINESS NEGOTIATION

Known for its accessible approach and concrete real-life examples, the second edition of *Practical Business Negotiation* continues to equip users with the necessary, practical knowledge and tools to negotiate well in business. The book guides users through the negotiation process, on getting started, the sequence of actions, expectations when negotiating, applicable language, interacting with different cultures, and completing a negotiation. Each section of the book contains one or two key takeaways about planning, structuring, verbalizing, or understanding negotiation.

Updated with solid case studies, the new edition also tackles cross-cultural communication and communication in the digital world. Users, especially non-native English speakers, will be able to hone their business negotiation skill by reading, discussing, and doing to become apt negotiators.

The new edition comes with eResources, which are available at [www.routledge.com/9780367421731](http://www.routledge.com/9780367421731).

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# PRACTICAL BUSINESS NEGOTIATION

Second Edition

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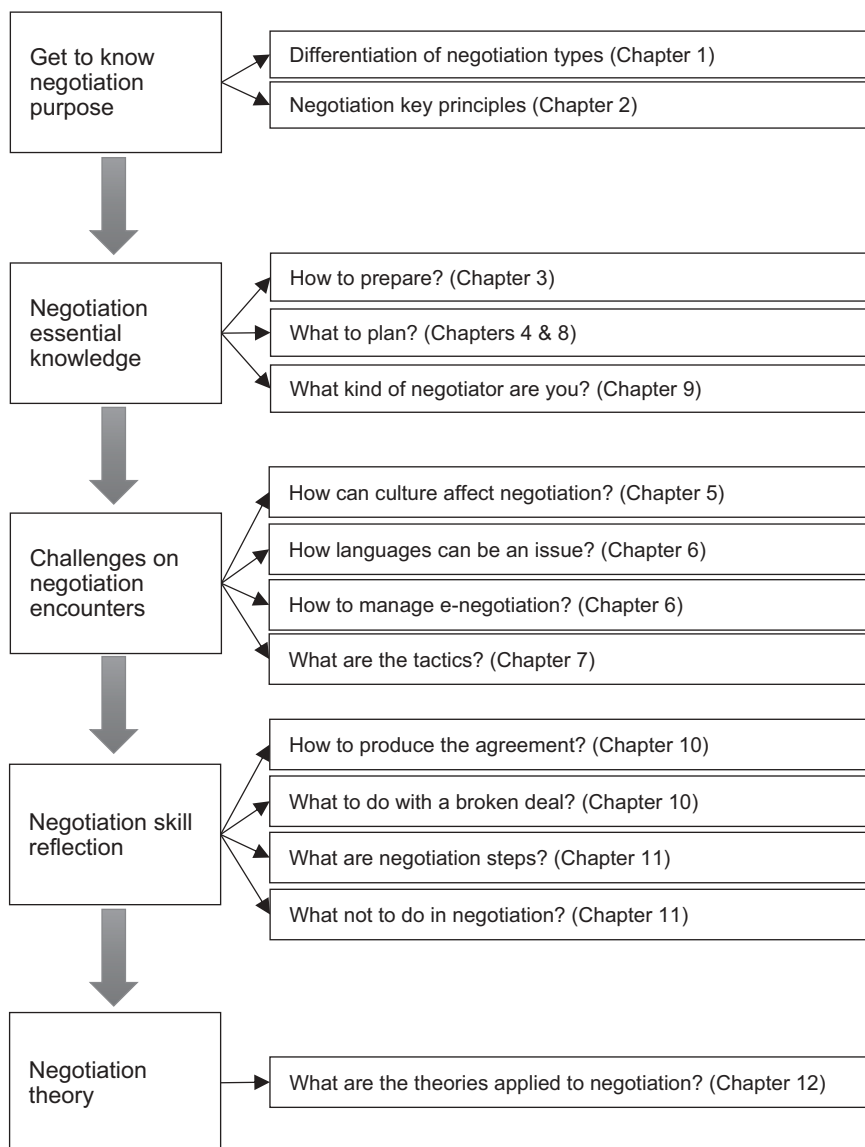
*William W. Baber*

First of all I would like to thank William W. Baber for giving me the opportunity to collaborate with him on this textbook. My greatest appreciation is for my husband due to his constant support.

*Chavi C-Y Fletcher-Chen*

# GUIDE TO USING THIS BOOK

Reading map for using this book as a negotiation guidance





# INTRODUCTORY COMMENT

The purpose of this textbook is to put the practical knowledge and tools that are necessary to negotiate well in business in the hands of students.

The textbook seeks to answer practical questions like:

- What is the overall process?
- How do you start?
- What is the right sequence?
- What should you expect?
- What phrases communicate the right intention?
- How do you finish it up?
- How do you learn more about it?

The textbook uses plain English, not difficult academic English. The textbook uses many diagrams to help visually explain the processes. Technical words (jargon) are explained so that you can use them properly to communicate your plans and ideas to your team, your superiors, and to companies you do business with.

The processes and ideas discussed in this textbook are based on the standard practices of “Western business” institutions – practices we must understand in order to function successfully in international business. The learning points of this book will be useful in most kinds of business interactions. However, local business practices and customs must be respected and understood in order to achieve local and regional success.

This textbook will teach you basic ideas about business negotiation by reading, discussing, and doing. Each section of this textbook contains one or two key points about planning, structuring, verbalizing, or understanding negotiation.

Using the case studies included, you will learn and practice phrases and jargon commonly used in negotiation. Additionally, you will learn the importance of understanding the other side as well as *how* to understand the other side.

Fundamentally, this textbook teaches that negotiation provides a framework to create value and business opportunities. Negotiation should not be a fight to take value from another party. Negotiation should be a constructive conversation in which all parties take home at least as much value as they need. Some of that value may be distributed in a zero-sum way, but additional value should be created to replace value conceded to other parties.

By the end of this text you should be able to:

- Identify and use key negotiating strategies;
- Identify monetary and non-monetary interests of all parties;
- Use various methods to prepare properly, including:
  - understanding your counterparts and
  - organizing before negotiating
  - discovery of interests and perspectives
- Use questions to understand the goals of counterparts;
- Provide and receive helpful information;
- Manage cultural differences;
- Identify and improve a BATNA;
- Identify and manage tactics;
- Build appropriate relationships;
- Resolve problems;
- Create opportunities for new value;
- Make agreements that can survive some common ups and downs when implemented
- Understand the lifecycle of negotiations;
- Engage in a mutually successful negotiation in which all parties are satisfied, and you have not unnecessarily given away value.

## **What kind of negotiation**

The kind of negotiation that we will discuss and study in this textbook is *business negotiation*. There are other domains of negotiation, for example political negotiation, which we will have nothing to do with. Business negotiation is largely an interactive experience with both sides mutually and openly seeking money, business opportunities, and other forms of value. Political negotiation, on the other hand, is much less open and often threatened by the actions of individuals and groups who do not seek common benefit.

## **“How to” processes**

As a practical textbook, you will learn useful “how to” processes. And here we need to be a little cautious. Cognitive psychology shows that processes are useful for simple tasks, but not for complex activities. For example, you can easily learn to turn a car left or right, to start and to stop, but these do not add up to the complicated activity of driving a car safely. However, after you learn turning, starting, and stopping, you are able gain the experience necessary to drive safely.

In the same way, business negotiation is a complicated procedure that cannot be put into a cookbook recipe of easy steps. You need to know why and how the process works in order to become experts. The processes included in this textbook are therefore useful small steps, and general overall guidelines. They are not strict kitchen cooking steps. Your first driving lessons are probably on a safe course or parking lot, not a fast highway. Similarly, this textbook contains practices, examples, and simulations so that you can learn by doing, even if you are not at risk of losing money or business.

## **Contents**

Most of this text discusses approaches to resolving problems and difficulties in negotiations, or “solving problems jointly” as in the book *3D Negotiation* by Lax and Sebenius and other books broadly referred to as *Harvard Method* or *mutual gains negotiation*. Part of this text is devoted to the useful words, phrases, and practices that will help you become comfortable with the processes of negotiating. Practical steps for problem solving, researching, and designing agreements are included. A portion of this text is reserved for tactics, mainly avoiding and handling aggressive tactics.

# 1

## WHAT DO YOU WANT TO GET FROM NEGOTIATIONS?

### Distributive and integrative

“What are you trying to get?” This is a key overall question to answer before beginning the planning and talking (see Figure 1.1).

Your answer is likely to be “as much as possible” or “best result for all” or a combination of these two.

The following two concepts are fundamental to understanding negotiation and how negotiators think.

**Distributive perspective.** Negotiators try to dominate the other party because they believe they are in direct conflict with the other party over limited resources. Negotiators in a distributive situation fight hard for their positions (specific prices or amounts) because their loss is the other side’s gain. The negotiators believe there will be a clear winner and loser, but not multiple winners.

Adapted from Metcalf and Bird (2004)

**Integrative perspective.** Negotiators . . . believe that all parties can win through mutually beneficial solutions. Integrative negotiators take a problem-solving approach, putting focus on exchanging information in order to identify underlying issues and interests and to generate outcomes that benefit all parties.

Negotiators reach agreement by employing creative problem solving approaches to develop solutions that increase the benefits available to everyone.

Adapted from Metcalf and Bird (2004)

## 2 What do you want to get from negotiations?

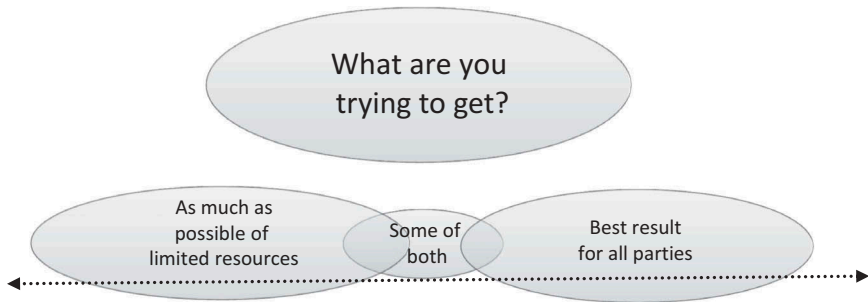


FIGURE 1.1 What are you trying to get?

**Distributive thinking** is useful when you must get a certain amount of limited resources for your side. In most real world business situations, however, this kind of thinking will block you from creating and sharing maximum mutual value.

**Integrative thinking** is useful in complex situations where you need to connect many issues and when you want to maximize the opportunities for value.

Q1: Which of these negotiations are probably distributive? \_\_\_\_\_

- A renter and landlord negotiating the rental price of an apartment.
- Deciding how Yumi, Ken, and Jun will share the last piece of cake.
- Developers, manager, and residents considering a new training camp for a winning, major famous sports team in a rural area.
- A football star working out a salary with the team's managers.

Q2: Ichiro is an international baseball star. He is so famous everyone recognizes him just by his first name! His main advertising contract is with Kirin beer, one of the three large beer makers in Japan. His negotiator gets a share of every advertising contract. How do you think the negotiator will approach negotiations? With distributive or integrative thinking? Why?

\_\_\_\_\_

Q3: Which of these negotiations are probably "integrative"?

- Buying a car.
- Arranging a meal and price for your hiking club (40 people).
- Buying snacks in the outdoor market.
- Developing the annual financial budget of a city with 2 million inhabitants.

Q4: Write an example of a typically distributive negotiation: \_\_\_\_\_

Q5: Write an example of a typically integrative negotiation: \_\_\_\_\_

Q6: Your company is buying a division of Osaka based Kansai Kogyo (KK). The agreement is complicated, but entirely based on money. Is it distributive or integrative?

Once there were two little boys and one old broken bicycle. Each one wanted the bicycle; they could not agree to share it. Eventually they started talking ... they learned that one wanted the old tires to make a catapult, and the other wanted the body to make pipes. Integration of their needs and interests made it possible to distribute everything successfully.

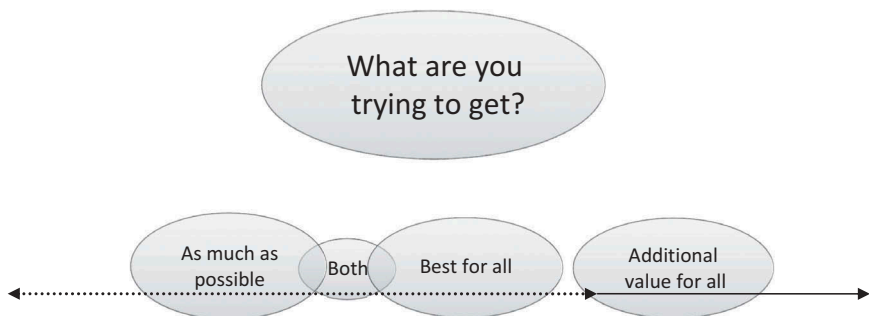
Another basic way to think about negotiation is **Claiming** and **Creating Value**.

- When you claim value, you are aiming for the left side of Figure 1.1 as a distributive negotiator. Claiming value means getting as much as possible of limited resources.
- When you create value, you are aiming for the right side of Figure 1.1 ... and beyond. Creating value is certainly integrative; you must bring many issues together, *even issues not planned for the negotiation*, to create new value.

See Figure 1.2 below for the idea of going beyond “Best”.

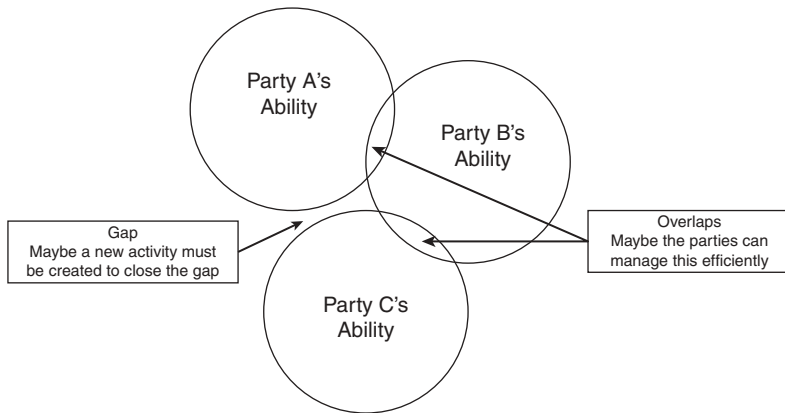
**Example of creating new value**

A manufacturer and a distributor were negotiating a typical limited distribution agreement. After some discussions, they agreed to have the distributor make a small change to products sold in one region. Therefore, the manufacturer sold more products and the distributor gained value-added work. Both sides created new value together, beyond their plans for “typical distribution”.



**FIGURE 1.2** Try to get more

#### 4 What do you want to get from negotiations?



**FIGURE 1.3** Creating new value: gaps and overlaps

It is a good habit to think about opportunities for creating new value from the start of a negotiation, even during the early planning phases.

Movius and Susskind (2009, pp. 180–181) include a checklist for new value creation such as looking for different ways that the parties value the same issue, joint use of resources, differences in risk tolerance, and additional issues to add to the core transaction.

Following the ideas of Movius and Susskind, negotiators should look for opportunities to create new value in the gaps where the parties cannot easily match their abilities, viewpoints, values, or resources. For example, a party which sees no value in retail sales may be happy to let another party with distribution skills handle some retail work.

Along the way, parties should look for new value opportunities where skills, interests, viewpoints, and abilities overlap. For example, if both parties are good at an activity, they could bring their teams together to share best practices and gain efficiency.

Figure 1.3 illustrates the gaps and overlaps.

Figure 1.4 provides additional practical ideas about where to search for new value opportunities in typical contracts and agreements.

### ***Section terminology***

*Integrate:* combine various information, needs, and goals.

*Resources:* things used to conduct business such as time, money, equipment, staff, etc.

*Tangible:* physical things you can touch (money, equipment, products, etc.)

*Intangible:* non-physical things (brand, reputation, feelings, etc.)

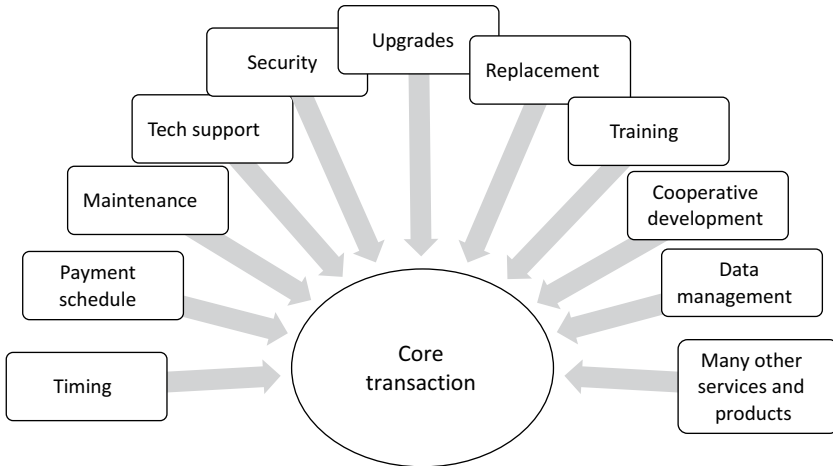


FIGURE 1.4 Where to find new value opportunities

### Section summary

Most negotiations include sharing finite limited resources (distributive) that are connected with more complex, tangible or intangible issues (integrative).

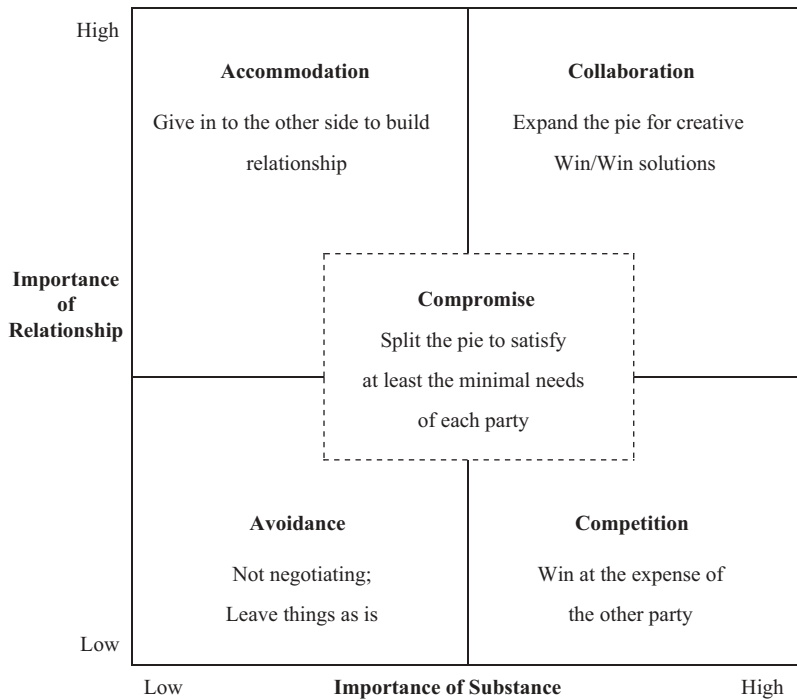
### Choosing the strategy

Five broad negotiation strategies, accommodate, collaborate, compromise, avoid, and compete are described by Lewicki, Hiam and Olander (1996) in their well-known graphic (Figure 1.5):

Negotiators use the figure above to decide which approach is best. The figure only deals with two dimensions: importance of substantive outcome (tangible and intangible gains that are at the center of a negotiation) and importance of relationship. These ideas make a useful starting point for considering the whole negotiation, and each issue within the negotiation. However, in addition to the relationship and substance, there are many other factors that may have an impact on choosing the negotiation strategy.

The following list of factors (Table 1.1) is adapted from Lewicki, Hiam and Olander (1996) as well as Ware (1980). These should be taken into consideration when choosing strategies. They include psychological, social, technical, and contextual factors. These additional factors are flexible and changeable, so reassessing these factors as the negotiation develops will help you adjust strategies to match the situation.





**FIGURE 1.5** Choosing a negotiation strategy

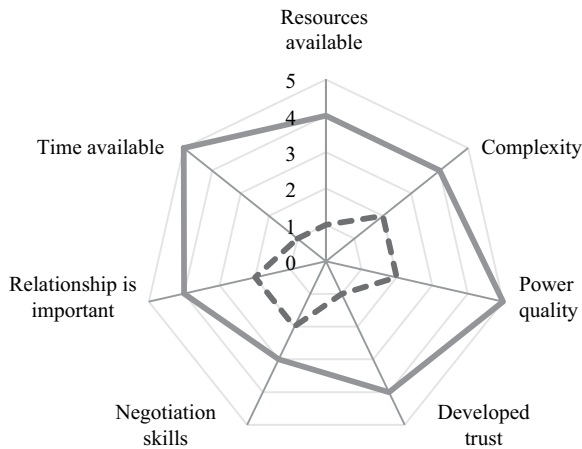
Source: (Lewicki, Hiam, and Olander, 1996)

**TABLE 1.1** Changeable factors surrounding a negotiation

---

Resources	<ul style="list-style-type: none"> <li>• Scarcity of time, money, manpower, skills, and other resources needed for execution of an agreement;</li> <li>• Need to allocate resources precisely.</li> </ul>
Among the negotiating parties	<ul style="list-style-type: none"> <li>• Mutual respect among the negotiators;</li> <li>• Personality of the negotiators;</li> <li>• Empathy among the negotiators;</li> <li>• Team internal relationships;</li> <li>• Trust among the negotiators;</li> <li>• Physical environment;</li> <li>• Procedural matters;</li> <li>• Negotiator skill level.</li> </ul>
Environment around the negotiating parties	<ul style="list-style-type: none"> <li>• Complexity of issues;</li> <li>• Political and regulatory environment;</li> <li>• Importance of maintaining a good relationship;</li> <li>• Relative power of the parties;</li> <li>• Uncertainty surrounding issues;</li> <li>• Pressure from stakeholders;</li> <li>• Limited time for negotiating;</li> <li>• Importance of outcomes.</li> </ul>

---



**FIGURE 1.6** Compete or collaborate

It is helpful to select a few of the factors above to guide your choice of strategy. Since the factors above are relative, and not absolute, we can assess them as roughly high, low, or medium. Plotting the selected factors on a scale from 0–5 allows a visual determination of the most suitable strategy. For this purpose, variables such as: time, resources, relationship, power, trust, skills, and complexity can provide an overview of the negotiation. These factors are plotted for two different negotiations in Figure 1.6.

A negotiation with high scores for many of the factors, such as the one mapped by the solid line in the figure above, matches well with a collaborative strategy. A negotiation with mostly low scores, such as mapped by the dotted line, is best handled with a competitive strategy.

### ***Urgency, stakes, chance of success, and relationship***

Another way to choose a strategy is to consider urgency, stakes, and relationship. Urgency refers to the speed with which the organization hopes to complete the negotiation. Stakes refers to the importance of the outcome, for example, high stakes might mean survival or failure of the organization. Low stakes, however, means little impact on the organization. Relationship refers to the quality of the existing relationship.

To use the graphic in Figure 1.7, consider the three categories in order from left to right for each issue or for the overall negotiation. Follow the arrows based on your evaluation of the urgency, stakes, and relationship. For example, if the urgency is low and stakes are low, there is no reason to immediately deal with the issue. If there is enough time (low urgency) and the issue is important (high stakes) and the quality of the relationship is medium, look for compromises.

8 What do you want to get from negotiations?

Negotiation Strategy Selection

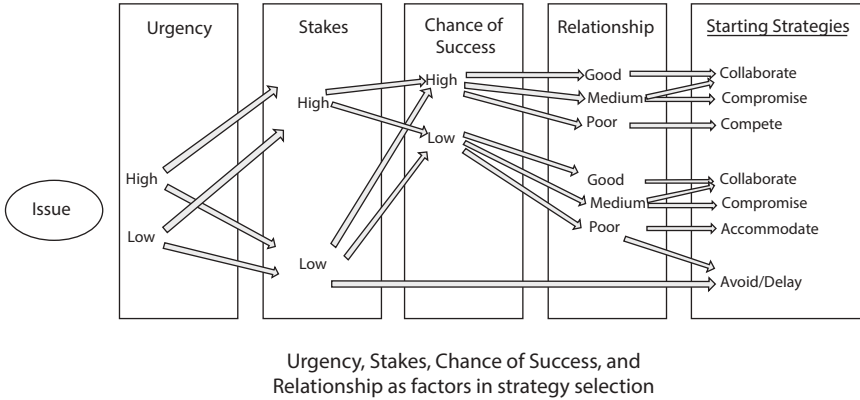


FIGURE 1.7 Choosing negotiation strategies

**CASE 1.1: CHOOSE THE STRATEGY I**

SamYeong, Co. and HoPha, Inc. are preparing a joint proposal for a construction project. SamYeong is an engineering services company with high skills in steel suspension design. HoPha specializes in installation of complex support systems Both firms are able to organize the general construction work. There is a large amount of money and potential profit in the general construction work. These profits will improve the projected profits of the companies from merely acceptable to a much higher level. The companies do not have a history of cooperation; however, they need to work together in order to win the contract for this project – there are no alternative partners. Somehow they will have to manage an agreement regarding the general construction work. The bid must be submitted in 12 months.

Please evaluate the following:

- Urgency: \_\_\_\_\_
- Stakes: \_\_\_\_\_
- Success chance: \_\_\_\_\_
- Relationship: \_\_\_\_\_
- Strategy: \_\_\_\_\_

**CASE 1.2: CHOOSE THE STRATEGY II**

In the following example,

SamYeong, Co. is negotiating with Jiffy Job Inc. about interior finishing and carpentry work. The work requires good skills and high quality control. The project starts immediately so you hope to hear from Jiffy soon; they have worked well and quickly in the past. One issue in the negotiation is cost and another is the delivery date. As for the cost, you have only \$1200 in your budget to pay for this. They have asked for more but you are determined to keep the price down to \$1050. This has been a tough season so you need to be extra careful about your money! Regarding the delivery date, you are a little more flexible, but the sooner they finish the better. You will have one extra person on staff from the 14th, so you want to Jiffy to finish on the 13th. Unfortunately, Jiffy would like to finish on the 16th. They seem to be very busy with their staff at other job sites.

From SamYeong’s point of view, please evaluate the following for cost:

From SamYeong’s point of view,  
please evaluate the following for  
cost:

- Urgency: \_\_\_\_\_
- Stakes: \_\_\_\_\_
- Success: \_\_\_\_\_
- Relationship: \_\_\_\_\_
- Strategy: \_\_\_\_\_

From SamYeong’s point of view,  
please evaluate the following for the  
due date:

- Urgency: \_\_\_\_\_
- Stakes: \_\_\_\_\_
- Success: \_\_\_\_\_
- Relationship: \_\_\_\_\_
- Strategy: \_\_\_\_\_

***Changing your strategy appropriately – staying flexible***

A negotiation might move from competitive to collaborative as the parties interact more. For example, trust might increase, more time might become available, the importance of the relationship might change and so on. Because integrative, collaborative negotiations tend to create more value for all parties, it is best to attempt to move a negotiation from competitive to collaborative.

However, a collaborative negotiation can break down into a competitive one as deadlines approach and parties feel the pressure of time.

Many negotiations include issues demanding collaborative/integrative approaches as well as ones that are more distributive. Therefore, it may be useful or necessary to switch strategies. Ware (1980) suggests separating the approaches in time and space with appropriate sequencing and packaging.

Reasons a factor might change from distributive to integrative or reverse appear in Table 1.2.

## 10 What do you want to get from negotiations?

**TABLE 1.2** How negotiation factors change

<i>Factors</i>	<i>Possible sources of change</i>
<i>Resources</i>	
<ul style="list-style-type: none"> <li>• Time, money, manpower, skills, and other resources needed for execution of an agreement;</li> <li>• Need to allocate resources with precision.</li> </ul>	<ul style="list-style-type: none"> <li>• Deadlines may become more flexible;</li> <li>• Labor costs decrease/increase;</li> <li>• Highly skilled staff is recruited or lost;</li> <li>• Scope and funding change.</li> </ul>
<i>Among the negotiating parties</i>	
<ul style="list-style-type: none"> <li>• Mutual respect among the negotiators;</li> <li>• Personality of the negotiators;</li> <li>• Empathy among the negotiators;</li> <li>• Team internal relationships;</li> <li>• Trust among the negotiators;</li> <li>• Physical environment;</li> <li>• Procedural matters;</li> <li>• Negotiator skill level.</li> </ul>	<ul style="list-style-type: none"> <li>• New staff;</li> <li>• Team dynamic improves or breaks down;</li> <li>• Counterparties know each other better;</li> <li>• Skills improve;</li> <li>• New location/venue is agreed;</li> <li>• Procedures become more comfortable/difficult;</li> <li>• Negotiators link or delink issues in the negotiation to make them more or less flexible.</li> </ul>
<i>Environment around the negotiating parties</i>	
<ul style="list-style-type: none"> <li>• Complexity of issues;</li> <li>• Political and regulatory environment;</li> <li>• Importance of maintaining a good relationship;</li> <li>• Relative power of the parties;</li> <li>• Uncertainty surrounding issues;</li> <li>• Pressure from stakeholders;</li> <li>• Limited time for negotiating;</li> <li>• Importance of outcomes.</li> </ul>	<ul style="list-style-type: none"> <li>• Regulations become more friendly or more difficult;</li> <li>• Political support or pressure from the back table increases/decreases;</li> <li>• New technology simplifies or complicates matters;</li> <li>• Power changes;</li> <li>• Knowledge and understanding increase/decrease;</li> <li>• Time constraints expand or contract;</li> <li>• Stakes increase or decrease.</li> </ul>

Handling problem solving first in the overall sequencing of a collaborative or mixed strategy negotiation is preferable, as discussed in Chapter 4. Without an idea about the possible solutions before taking on the competitive issue, the chance of confusing the negotiation partners and souring the communication increases.

### **Power**

There are three kinds of power in a business negotiation, BATNA power, coercive power, and perceived power. BATNA power is described in Chapter 3 and

it consists of the ability to walk away if a deal is not attractive enough. Coercive power is rarely experienced in the business world in countries with sound legal systems. Often this kind of power comes from organizations or individuals in authority that can demand bribes or threaten serious consequences with no danger to themselves. Coercive power may also come from organizations that have a monopoly. Monopoly, or near monopoly, organizations have the unbeatable BATNA that counterparties cannot choose to walk away. An example would be a government monopoly on a natural resource such as Precious Minerals Marketing Corporation in Ghana, which is the sole legal purchaser of the output of small gold mines. There is no legal alternative to compliance with their demands.

The last kind of power, perceived power, comes from the perception that one side has a dominant position. One party may promote the idea that they are powerful, but the “power” can only have impact if the other party believes it and reacts to it. In other words, this kind of power is only real if others believe it. Parties with this kind of “power” might include a company that is dominant in its industry and so well respected that suppliers and partners do not want to challenge it. An example can be found in the 2014 dispute between Amazon and some publishers (e.g. Hachette) in which Amazon controls the retail market so well that they can make demands without reacting to counteroffers.

In some parts of the world, major firms can successfully exercise perceived power based on their size, history, or position in the industry. The smaller companies that supply and serve them may make statements like, “We cannot resist the will of that company because they helped found the country.” Or, “We must agree with that company because they were founded by the king’s brother decades ago.” However, it is of course possible to resist such companies.

In order to fight back against any form of power, a company must show how its product or services are necessary to the “powerful” company as well as how they are different from and better than the competition. Another way to fight back of course is to improve your BATNA so that you create alternatives and escape the power of the other party. In the end, a strong BATNA will be the most help in dealing with any kind of power brought by a counterparty.

## **When not to negotiate at all**

Some negotiations should not happen. These include for example negotiations about issues where both sides have low interest and cost is high and there is no expected value in the relationship (see Figure 1.5 above). Consider the following case.

### **CASE 1.3: THE INCOMPETENT TRANSLATOR**

Some years ago, a new translation services company in the Washington, DC area ordered a translation from English into Czech. The translation was not long and the cost was only about \$500. The translator provided the Czech text on time by email. There was only one problem: the project manager who received the text immediately recognized that it used none of the special characters from the Czech alphabet.

The Czech language uses the Latin alphabet plus several modified characters for a total of 42 characters. For example, the language uses “c” and “č” and “a” as well as “á”. These special characters have different pronunciations and carry important grammatical meaning.

The project manager asked the translator to put the characters in, but he refused. “The text is understandable to a Czech,” he said. “It is good enough.”

This was certainly true; the text was comprehensible to a Czech. However, no Czech office manager or school teacher would accept any writing lacking the special characters. Text of that sort would only be usable in a very informal setting. It was not “good enough”. The agreement with the translator had not specified any “normal” or “special” purpose or setting or formality.

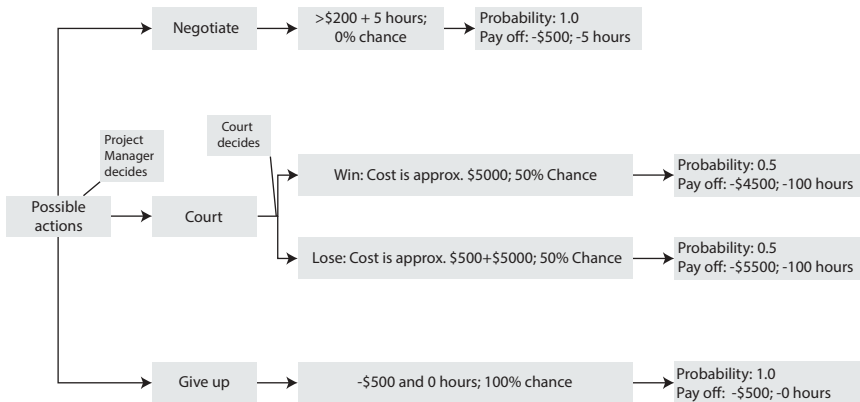
The project manager, feeling the situation was very clear, refused to pay the translator. The translator insisted on payment and threatened action in the California court system. At the same time, he lodged a complaint with the American Association of Translators (AAT), of which he was a member. AAT promptly sent a demand to the project manager for payment stating that they would blacklist the company from their services not only in California but nationwide. They did not respond to the project manager’s irritated letter claiming that the text was unusable.

At this point the project manager faced a choice: try to negotiate, fight a court case 4,000 kilometers away, or give up.

### ***Decision time***

*Negotiate:* The other party in the negotiation, the translator, refused to talk. The translator had successfully drawn in a powerful ally, AAT, and seemed to have their full support.

*Court:* Assembling the evidence against the translator would be easy. However, judges are specialists in law, not linguistics. An expert witness would cost an additional \$500–1,000. Indeed, a single plane ticket would cost at least \$500. A lawyer’s services would cost \$2,000–3,000. Of course, the problem might not be resolved in just one visit. With experts and AAT weighing in, the court case could have gone either way, a victory or a loss.



**FIGURE 1.8** Decision not to negotiate

*Give up:* Giving up would cost only \$500 and take no time at all. There would be no concern about losing the court case and paying the costs of the other side.

The project manager’s choices could be drawn like this.

After considering the situation described in Figure 1.8, the project manager, with the agreement of the owner of the translation services company, gave up. The fee was paid despite the fact that the product delivered was worthless.

Do you think the project manager and owner made the right decision? Why?

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# 2

## FIRST CONNECTIONS

### **Gaining and giving information**

Above we encountered two basic approaches, distributive and integrative. Distributive negotiators do not need to learn much about the other party – therefore they typically ask only a few questions with a narrow focus and share little information about themselves.

Integrative negotiators on the other hand ask many questions. They share much (perhaps even all) information about their positions. This section is about how questions for information may be asked and answered.

Table 2.1 below provides an example: Tanba Agro is negotiating sale and delivery of eggs to Hyogo Cake factory.

### ***Types of questions***

Simon Hazeldine, a UK business negotiator, writes that you will need to use four kinds of questions: closed, probing, open ended, and summarizing.

#### ***Closed questions***

These simple questions seek specific answers to specific questions. You can ask for Yes/No answers (Hazeldine, 2006, p. 63).

#### ***Probing questions***

In *3D Negotiating*, Lax and Sebenius say, “If they don’t like the concept, *probe*. Ask why? Why not X instead? What if Y? then, listen actively” (Lax and Sebenius, 2006, p. 77).

**TABLE 2.1** Constructive sharing of information

<i>Dialog</i>	<i>Comment</i>
Hyogo Cake: So basically, we need 3,000 eggs per day. Tanba Agro: OK!!	“OK!!” means Tanba Agro understands, not that B has committed to anything. Tanba Agro knows they cannot deliver the eggs all at once because of truck availability.
Tanba Agro: Your factory has an interesting process ... do you use all the eggs at once?	Tanba Agro changes subject without showing the difficulty on his side by asking a general question about the factory, the process, or other topic related to the cake business.
Hyogo Cake: No, we have three baking batches per day. Each time we need 1,000 eggs. Batches start at 8 AM, 11 AM, and 2 PM. Tanba Agro: I see. Is it difficult to keep all those eggs until you are ready? Hyogo Cake: Yes – it takes a lot of space.	Now Tanba Agro knows it might be possible to deliver the eggs at two or three times during a work day. Tanba Agro also now knows that Hyogo Cake might like to have the eggs arrive at three times. Tanba Agro can use this information to save money ...
Hyogo Cake: However the price is too high for us. XYZ Corp. can deliver the eggs all at 8 AM 3% cheaper. Tanba Agro: If you can take the eggs at 7:45, 10:45 and 1:45, we can decrease our offer by 2%.	... or to offer Hyogo Cake a discount ... note that Tanba Agro’s discount does not have to be as big as XYZ’s because the delivery schedule is convenient for Hyogo Cake.

Hazeldine (2006) has this to say about probing questions.

These are used to explore a point the other party has made. They allow you to drill further into what has been said so that you can understand it in more detail. Examples include:

“What makes you say that?”

“In what way do you think...?”

“How do you mean?”

“Why did you bring that up?”

A useful probing technique is to use “echo questions”. An echo question is where you use the last word or few words of what the other party says as a probing question. An example:

“We need a significant investment.”

“Significant investment?”

In this example, you are probing further to discover how the other party defines “significant investment”.

*Bare Knuckle Negotiating*, Hazeldine (2006), p. 64

**16** First connections

Why do you think that “echo questions” are effective? \_\_\_\_\_

What do both sides learn from an echo question? \_\_\_\_\_

In the text below, Hazeldine suggests also using broader questions that invite general exchanges of information.

**OPEN QUESTIONS**

These are broad, diagnostic questions that encourage the other party to talk about their situation. Open questions usually start with words such as what, when, why, how, where, who, which and usually result in a multi-word or sentence answer. Examples would include:

“What do you want to change about your current situation?”

“You have mentioned you have some concerns. What are they?”

Open questions are used to gather information, and closed questions are used to clarify what you discover and to get specific answers and commitments.

Hazeldine (2006), p. 64

In which situation during a negotiation would you ask an open question?

- \_\_\_\_\_ at the beginning of negotiations
- \_\_\_\_\_ when you want specific facts
- \_\_\_\_\_ when you are unclear about a general idea
- \_\_\_\_\_ when you are just finishing up negotiations

What kind of question would you ask after hearing, “Our company can deliver 2,000 units.”?

Closed                      Open                      Probing

Write the question you might ask: \_\_\_\_\_?

Return to the negotiation between the egg supplier and the cake maker at the beginning of this section. What additional questions should you ask? Develop two questions Tanba Agro could ask Hyogo Cake.

\_\_\_\_\_

\_\_\_\_\_

Asking questions to identify problem points

Use the inconsistency trap to learn about the other side and their understanding of the issues.

How it works: Ask, then listen. Then rephrase the question and ask again. Compare the answers to each other and to your sources of information to look

for points that you do not understand. These points may be difficult to understand because information is poorly explained, the counterparties have hidden the information, or because they have not noticed the need for the missing information.

Summarizing – see the Verbal signals section of Chapter 6 for more on this.

### ***Section terminology***

*Probe*: to explore and push for deeper, specific information.

*Commit*: agree to expend money, time, and other resources with full intent to complete.

*Diagnostic question*: a question for learning general information.

*Inconsistency*: information that is not the same as it was when first presented.

### ***Section summary***

Ask questions to gain information and build your understanding.

## **Relationships**

In the previous section we saw how a negotiator can ask questions to learn about the overall situation and the needs of the other person, and find ways to improve an offer in order to increase the likelihood of agreeing.

Asking questions and answering questions can also help build a relationship. Fundamentally, negotiations should lead to a successful business transaction or avoidance of a bad one. But just completing one transaction is *not the greatest success*. The negotiation partners could benefit from building a relationship of confidence and mutual accessibility that leads to *more* transactions in more areas of business – that is real success. We can arrive at “real success” through relationships built on reciprocity, empathy, and understanding interests.

### ***Reciprocity through getting and giving***

When someone tells you something, shares information with you, or gives you something, you should give something in return. This is called *reciprocity*. Returning information or some helpful action will build and improve the relationship among the parties (Cellich and Jain, 2004). Sharing information often helps build confidence and relationships while providing the information necessary to create a good result.

Sharing information is the most common way of building relationships through reciprocity when working with companies culturally rooted in the “western” world. Other parts of the world find reciprocity and build relationships through giving gifts.

The gift may be an item such as expensive wine or a local specialty or by doing the other parties a favour. In business negotiations, it may be a concession given early in the talks. Giving the gift or concession or doing the favour places a burden on the other parties to respond similarly. Just as with shared information, the pressure to respond appropriately is strong, and failing to respond appropriately may damage the relationship. This kind of interaction based on gifts and favours is part of the concept of *guanxi* in China, *ongi* and *kankei* in Japan, and may be familiar to many in the cultures of East and Southeast Asia in particular.

When dealing with a culture you are unfamiliar with, use very knowledgeable local people to help you prepare for the kind of reciprocity in that region. The following quote from Thams, Liu, and von Glinow (2013, p. 466) is on target:

...although there might be some universal principles governing reciprocity, people in different cultures embrace reciprocity differently;

### **RECIPROCITY DECREASES TENSION**

An air of tension can also be created by unknown factors. For example, you may never have met the people you will be negotiating with before, and this can lead to feelings of uncertainty.

You can reduce the tension by remembering that your key focus ... is to find out what the other party wants, and to communicate what you want.

Hazeldine (2006), p. 60

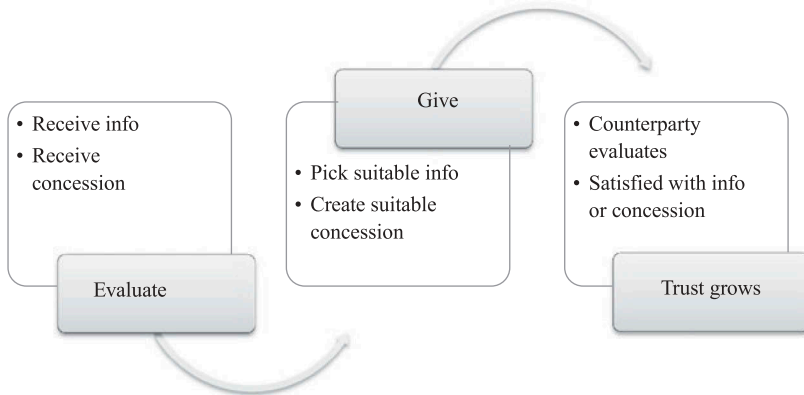
However, if one party gives a small concession and expects a much better concession in return, the relationship and the negotiation will deteriorate (Cellich and Jain, 2004). If you have been given a small concession and feel pressure to give a larger concession in return, you must either get another concession, or carefully consider the size and value of the concession you might give. Positive reciprocity can help the constructive exchange of information and ideas. Negative reciprocity (i.e. responding aggressively to aggressive actions) results in unequal sharing, damaged relationships, and failed negotiations.

How can you manage reciprocity in order to comfortably share information without losing control or not receiving reciprocal information from the other party?

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Reciprocity, whether based on exchanging information or placing obligations on other parties, works because it is a widely accepted “norm”. Under usual conditions, most people and organizations will share information cautiously at first, and then more openly. The sharing is a process that builds trust and confidence. Be a little cautious: it is possible for a negotiation partner to abuse the reciprocity



**FIGURE 2.1** The cycle of sharing

process. If the other side does not share, then you should consider a different approach or a different partner. You must be sure that the other side is sharing quality information and concessions. If you give too much too soon, you may learn too late that your negotiation partner is not working with you constructively. Figure 2.1 shows how the steps of the cycle can build trust.

Let's go beyond understanding needs to understanding interests. To do so we need empathy – the ability to recognize feelings and think of others. We can use empathy to understand the reasons for the choices made by counterparties.

### **Section summary**

Reciprocity helps build relationships and make them deeper. Relationships improve business outcomes.

### **Empathy**

#### **TOUGH OR WITH FEELING?**

Many people feel that they must choose between being assertive and being empathic – being “hard” or being “soft”. But that’s a false choice. Showing empathy about your counterparty’s interests, perceptions, and constraints may make him or her more open to providing you with useful information. The more empathically you understand your counterparty, the more effectively you can design value-creating deals and the better positioned you are to claim a full share of that value.

*3D Negotiating*, Lax and Sebenius, p. 216

Empathy is a way to improve negotiation outcomes by:

- Understanding the negotiation partner's values;
- Increasing mutual gains and satisfaction;
- Avoiding ethics errors.

Understanding leads to improved results, possibly for all sides. Your values may be different from the values of the other sides in the negotiation. Using empathy, you can identify the differences and perhaps more easily create solutions that protect your values as well as theirs. If the other sides cannot protect their values, they are more likely to leave the negotiation or seek new partners for future projects.

Assertiveness is often an opposite behaviour to empathy. Assertiveness means putting pressure on the other sides to accept your position. Assertiveness of this sort may damage a negotiation by limiting the opportunities for other or all sides to make gains together. Assertiveness also means getting your ideas into the conversation. Failing to get your ideas on the table will not benefit any parties.

As empathy and understanding increases, the negotiation partners will have more opportunities to maximize *mutual* gains, not just their own gains. As the gains of all sides increase, satisfaction is likely to increase.

Importantly, empathy can help you avoid ethical mistakes like improperly explaining risks or value related to the negotiation or inappropriately taking an asset that has particularly high value attached to it by one of the other negotiation partners.

Empathy in some cultures may include additional generally positive feelings. For example, in Japan, businesspeople are often sensitive to the feeling of *en* (縁), also called *wetto*, a notion of compatibility, likability, and vague potential for good results (De Mente, 2004). This feeling can impact business decisions including negotiations, contracts, and follow up. The feeling of *en* is part of Japanese empathy and therefore part of relationship building in Japan. Sensitivity to creating and building culturally specific kinds of empathy is important for cross-cultural negotiators.

There are many ways to build empathy, but negotiators must be careful to do it in ways that match the expectations of the other sides. Nonetheless, a commonly used approach is to show that you share identities with the other parties. Some identities that are widely shared including being parents, sports interests, field of study, employment history, and so on. Research has found that empathy tends to increase shared gains (Galinsky, Maddux, Gilin and White, 2008).

In summary, it sounds like empathy is a great thing to develop!

But is it possible for empathy to create too much sympathy? After all, you might not want to explain to your boss or your shareholders that you left resources unclaimed out of sympathy for the other side.

## Section summary

Empathy means understanding the interests and values of the other party. It helps create positive value and improves the outcome of the negotiation. It is not appropriate however to become too understanding.

## Review of relationship building

Please talk to your partner(s) and try to answer these questions:

Why should you try to build relationships?

How can you build positive relationships?

**Situation:** You are in South America working on an acquisition of intellectual property. How can you build a relationship and empathy with the other party? Please write your ideas here:

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### But ...

Do not expect all negotiations to result happily in future business opportunities.

Here are examples of negotiations that will probably *not* lead to repeat business:

- 1) You buy a house you expect to live in for at least the coming 20 years.
- 2) You complain about poor products that your company will not need again.
- 3) You disagree about the cost with a taxi driver in a foreign city.
- 4) You buy services for a one-time conference overseas that your company will organize.

In the situations above, is it sensible to spend time and energy to build relationships? Explain your answers:

1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
\_\_\_\_\_



**Why build relationships**

“Each side of the relationship should be developing plans that incorporate the other’s interests into those plans. Without doing so, a long-term relationship entails the disadvantage of closing off options, without accruing the benefits of the longer term commitment” (Sheppard, 2003).

Which sentence best summarizes the above paragraph? \_\_\_\_\_

- a) Long-term relationships must be carefully limited to avoid troubles.
- b) Help the other side make their plans successful so that you can keep useful options available in the future.
- c) Be sure to think long term so you can negotiate more in the future.

Sheppard (2003) also wrote, “Without mutual development, long-term relationships have no value.” Do you agree? Please explain:

---

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Fill in the blank to react to the circumstance with reciprocal approaches:

When the other party tells you ...	You reciprocate with ...
... they have new machinery, but it may not work well for the first month.	_____
... they are worried about getting enough workers in time.	_____
... they can speed up delivery to meet your tough schedule.	_____

Lax and Sebenius (2006) also say, “You are empathic when you try to understand the interests and motivations of the other side. You are assertive when you make your interests and demands clearly known to the other side.” Is it ever useful to be assertive? Why or why not?

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**Section summary**

Considering a situation from the perspective of other parties is less about emotional insight than about their material interests, goals, and strategies.

## Impression management

At the start of your relationship with the other parties in a negotiation, and at later times, you may want to manage or control your relationship. You can manage the impression that you make in a variety of ways. Communication of your image happens on three levels: to the organization (macro); to other teams (meso); and to other individuals (micro). It is of course possible to make a different impression on each level, and to change your approach as the relationship develops.

Some general approaches to impression management at the team and individual levels are discussed in Table 2.2.

**TABLE 2.2** Impression management approaches

<i>Approach</i>	<i>Advantages</i>	<i>Disadvantages</i>
Tough Guy	Other parties may decrease their expectations from the start.	Other parties may react with similar tough behaviour, leading the negotiations directly into deadlock or poor outcomes. See the section on <i>Playing the hard card first</i> in Chapter 7.
Nice Guy	Interactions start with a positive tone. Positive moves tend to be rewarded with positive responses.	May lead the aggressive parties to increase their demands if they feel the first impression or overall image is “soft”.
Technical	Shows a willingness to consider technical issues and complex solutions.	If the other parties are not strong on technology, they may become less comfortable with your side.
Trusting	Other parties may share their information more confidently. A better information flow may help you make strategies and decisions. It may also lead to better relationships.	Counterparties may try to take advantage if they think you are naive.
Cautious	Other sides may be cautious about making high demands.	Other parties may not share information or may not make matching concessions if they feel you are too cautious.
Corporate	A highly professional attitude may make others feel confident in your abilities.	Some parties present themselves as anti-establishment and may feel threatened by a strongly corporate look.
Professional Negotiator	If you use negotiating terminology like BATNA, reserves, and so on, other trained negotiators will identify you as a trained negotiator. Shared vocabulary will make communication easier and more successful.	Untrained parties may misunderstand your terminology or feel uncomfortable. The result may be poor communication.

(Continued)

TABLE 2.2 (Cont.)

<i>Approach</i>	<i>Advantages</i>	<i>Disadvantages</i>
Flexible	Being flexible signals that you are willing to solve problems creatively.	May signal that you are indecisive and can be bullied.
Inflexible	No clear advantage.	Other parties may not propose creative ideas if they expect you to reject them.

Presenting yourself and your organization to other organizations, the macro level, is generally the task of the marketing and public relations specialists in your organization. If you do not have these people on your staff, carefully coordinate your macro level impression management with the top managers and partners.

In addition to managing the impression you make on other parties, you will need to analyze the way your negotiation partners and teammates present themselves.

**Section summary**

Be aware of impressions and perceptions to manage how others feel toward you.

**Satisfaction**

In this section we are discussing satisfaction as a feeling or emotion that a negotiator has gotten a suitable deal, not just the minimal tangible satisfaction of their requirements.

No sensible party will agree to outcomes that are poor or unsatisfying. However, intangible satisfaction can range from high to low, or even negative (dissatisfaction). Do you think that satisfaction goes up or down in synch with tangible outcomes of the negotiation – for example, is satisfaction high if a high money goal is achieved? Your answer:

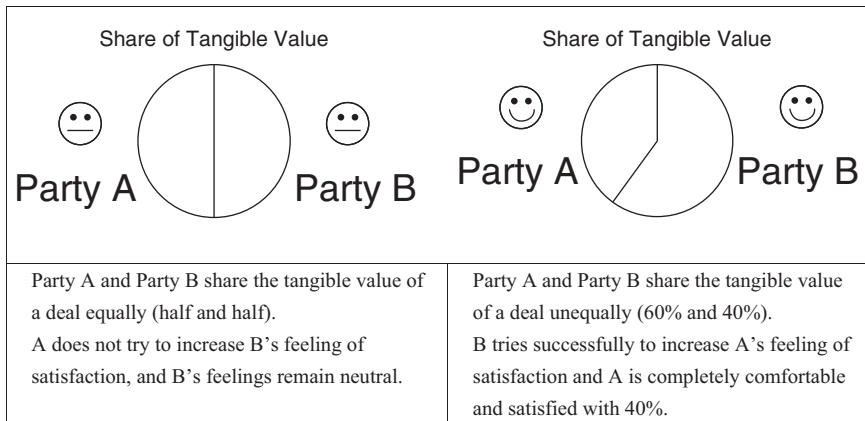
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What is the value of satisfaction? If we can show that a negotiator can be satisfied with a deal that has less value than a “perfect” deal, it means that the negotiator will trade tangible value for their own intangible satisfaction. Therefore, a skillful negotiator will seek to build intangible satisfaction while keeping some extra tangible value. Clearly, we can only manage this in integrative negotiations but not in purely distributive negotiations.

Here is how it works (Figure 2.2):



**FIGURE 2.2** Impact of satisfaction on value sharing

What is the future after satisfaction comes into a deal? According to Curhan, Elfenbein and Xu (2006), individuals who were very satisfied just after a negotiation were more likely later to intend to continue the business relationship. Objective measures (such as tangible outcomes) *had no impact* on plans to continue a business relationship or not!

Therefore, the benefit of making the other sides feel satisfied is not only (possibly) increased tangible gain, but a greater chance of future deals. The value of future deals? Possibly unlimited!

Curhan, Elfenbein and Xu (2006) described four ways to view the development of satisfaction in a negotiation:

- how the negotiation made us feel about ourselves,
- whether the negotiation process seemed fair,
- whether we've developed a productive working relationship with our counterparts, and
- measurable gains and losses.

The first three in the list above can only be described as feelings; these are subjective. Because they are subjective and difficult to measure, a skillful negotiator can actively influence those feelings.

What can you do to develop satisfaction in the other negotiating parties?

Regarding the last item in the table above, measurable issues, it may be necessary to show that these have been distributed appropriately among the negotiating parties. Be prepared to demonstrate fairness. However, humans tend to attach emotional value even to things that are concretely measurable and countable, so it may be possible to influence feelings about these "facts" despite demonstrating the actual breakdown.

**TABLE 2.3** Creating satisfaction

<i>Category</i>	<i>Write out some practical ideas for creating feelings of satisfaction in each of the four categories from Curhan et al.</i>
How the other parties feel about themselves during the negotiation process	
How fair the negotiation process seems to the other parties	
How the other parties feel about the relationship with you and your team	
Measurable issues in the negotiation	

**Section summary**

Try to build satisfaction into the negotiating process because it is more likely to lead to future business opportunities than if you simply exchange concessions.

**Relationship building at the table**

At the beginning of this Section, we read Lax and Sebenius’ idea that empathy is almost necessary for creating new value and successful negotiation. Do you and your partners agree?

But specifically, what can we do at the negotiating table? Someday you may have the experience of suddenly going into a negotiation situation with counter-parties you do not know. In that case ... .be friendly.

- Smile, but show earnest intent (smiling is not appropriate in all business cultures)
- Make small talk (choose appropriate topics)
- Listen carefully to their small talk (show respect)
- Learn about them (listen carefully, build empathy, take their perspective)
- Ask them questions (listen to the answers and learn)
- Share information (start the reciprocity process, communicate visually and verbally)

Swaab et al. (2002) found in their research that using visualizations (graphics, diagrams, animations) increased satisfaction among negotiating parties, therefore, communicate using graphic images.

Active listening is the term widely used for good listening skills. Active listening requires showing that you are listening by reacting with the appropriate verbal and body language signals. In some cultures, this might mean the correct use of interjections, for example *ah, uh huh, mm, so?* and similar words when suitable. Body language response might include nodding, leaning forward, eye contact, etc. However, these signals of active listening are a little different around the world. Try to learn the correct ones for the people you are interacting with.

To summarize, negotiators need to listen and ask and listen again in order to build relationships. That process can happen away from the negotiating table and outside the office experience, before and after the actual negotiating.

Never hesitate to talk to a person and listen to them. With most Europeans, North and South Americans, and people from many other cultures, you can walk directly to a person, greet them and talk. In other parts of the world where behaviour is more formal, adjust your approach to the standard local behaviours.

### ***Game theory***

In the well-known Prisoner's Dilemma game, there are two strategies: cooperate or defect. If the game is repeated, both sides easily see the value of cooperating. Cooperation leads to greater value for all parties. The same is true in negotiation – if one side shares information and the other side shares information, both will find that sharing information is rewarding. The rewards are: creation of knowledge and trust as well as increased opportunities to create new value.

Trust is the expectation that other parties will not defect. Developing trust means an evolution of events that lead to trust. That evolution can happen in the pattern of the graphic in Figure 2.3.

Figure 2.3 has no beginning or end. It repeats with better results from greater repetitions.

### ***Section summary***

Actively build relationships because it will help the negotiation and information exchange flow smoothly.

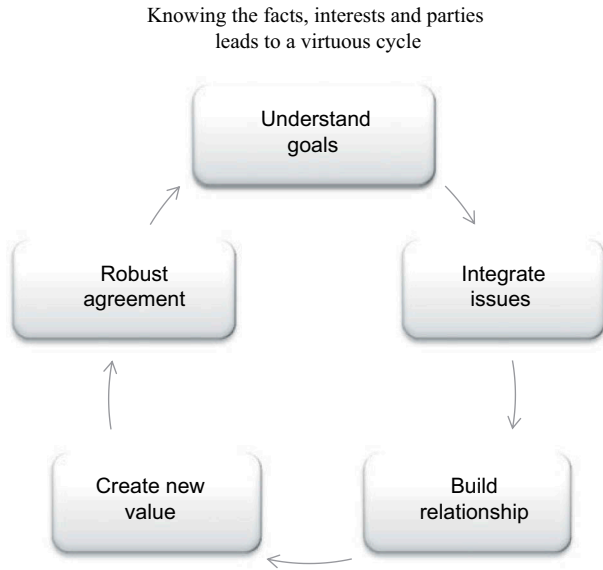


FIGURE 2.3 Virtuous cycle of knowing

### Negotiation error: how NOT to give a concession

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5            like er \* well 2.16 million \* an' because \*of the  
 6            purchasing policies an' things like this we reduced  
 7            the price okay we took out some things like the  
 8            neutral air (-) [cubicle but we]  
 9            (clears throat)  
 10    SellerJ   didn't take out much more than 80 thousand [pounds  
 11    BuyerS   mm]  
 12    SellerJ   worth but we give you a 365 k reduction \*\* to bring it  
 13            down to this 179|5 ...  
                  (part of discussion has been omitted)  
 14    SellerJ   We wanna be partners with you an' if we can help \* so  
 15            we did it that's what I'm saying so this 1795 is of our  
 16            good will without being asked  
 17    SellerA   can I take another (-) to that also in that period we  
 18            have lost 20%  
 19    SellerJ   Yeah I'll show you this actually  
 20    SellerP   yeah  
 21    SellerA   on the currency  
 ...            (part of discussion has been omitted)  
 22    BuyerL   sorry] sorry that the Finnish mark is getting weaker \*\*  
 23    SellerA   no the Finnish mark is getting stronger  
 24    SellerP   [stronger]  
 25    SellerJ   stronger]

Used with permission. (Vuorela 2005, p. 78)

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**Based on the extract above:**

What did the sales team give? \_\_\_\_\_ Why? \_\_\_\_\_

What did the buyers give? \_\_\_\_\_ Why? \_\_\_\_\_

What do you think happened to the sales team after this? \_\_\_\_\_

Write a sentence or two for the sales team to correctly offer this discount: \_\_\_\_\_

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Negotiator's Oath according to Simon Hazeldine (2006) In *Bare Knuckle Negotiating*:

*I solemnly promise never to give something for nothing!*



# 3

## CORE NEGOTIATION CONCEPTS

### **Anchoring effect**

The anchoring effect is explained by Lax and Sebenius (2006) in *3D Negotiating*, pp. 187–190. They found that experienced professionals receiving the same information, except for price, would *suggest prices close to the first offer* from the other party, even if their previous price info was very different. Therefore, Lax and Sebenius conclude that the first party to suggest a price gains an advantage. The authors also say that the price proposed must seem reasonable to the other parties because an excessive price would make the proposer seem foolish. Additionally, providing a clear compact reason for the price at the time you propose it may strengthen the anchoring effect.

Practical conclusion: try to be the first party to propose a price, however the price should not be outrageous and should include some reason or explanation. Lax and Sebenius (2006, p. 187) say, “...*make an offer just above the most they'd be willing to pay*”. Then, you can move down without losing much of the potential total value.

### **Example**

The author used to work for a business research company that specialized in Russian (then Soviet) business (in 1989–1992). We had to negotiate prices for market research and information. If we were expecting a price between \$5,000 and \$8,000, we were shocked to hear an offer of \$14,000. The offering party seemed foolish to us and we would look for another provider. With time, we learned to start the conversation with a low, but still reasonable, price, in other words a moderate anchor.

Q: What if you cannot anchor the price conversation?

A: Anchoring has its biggest effect on negotiators who are not aware of it. If you are aware of the anchor, you can re-anchor with your preferred price range. You can try to re-anchor immediately, or later. You can do it bluntly or by linking issues that explain why your new anchor is sensible.

Q: What if both sides know about anchoring and try to anchor early?

A: \_\_\_\_\_  
\_\_\_\_\_

### **Section summary**

Try to name the price first. This point is not important if the price range is limited or if price is a low priority issue.

### **BATNA**

The abbreviation BATNA means “Best Alternative to Negotiated Agreement” and is also called a “No-Deal Option”. BATNA is what you will/must do because of failing to negotiate an agreement.

Will you go bankrupt?	Will the other side go bankrupt?
Will you get fired?	Will the other party get fired?
Do you have another possible partner?	Do they have another possible partner?
Do you have time to find a new partner?	Do they have time to find a new partner?
Can either party do the work/create the product alone?	

Before you start negotiating, it is important to know what will happen if the negotiation collapses:

The answers to the questions above help you to understand the BATNAs of the parties.

Prepare before the negotiation starts to understand what the negotiation choices are so you can have the best possible BATNA. A typically strong BATNA could be having an alternative company to negotiate with.

Example: Company X makes electronic toys and wants a faster chip, but company Y only sells faster chips for an extremely high price. In this case, X must walk away. Also, Y must walk away. This is clearly a failure for both! We hope that X had already started talking with another chip maker. We hope that Y had already started talking with another electronics maker.

## 32 Core negotiation concepts

Sometimes there may be more than one possible alternative to negotiating. In that case it makes sense to consider which alternatives are better or worse. Identifying your Worst Alternative to Negotiated Agreement (WATNA) may be helpful in avoiding that result and assessing the importance of negotiating; another approach is thinking about the Most Likely Alternative to Negotiated Agreement (MLATNA), Ury and Fisher (1991). The “most likely” result is more specific than the general notion of BATNA and can help you eliminate “best” results from your planning that might really be unlikely.

### **Balance**

In any negotiation, you and the other parties involved face a fundamental and ongoing choice: between staying and walking...

This is the *deal/no-deal* balance. On one side of the balance you have the proposed deal; on the other, you have your “walk away option” ... or BATNA.

*3D Negotiating*, p. 27 (Lax and Sebenius)

It is **extremely** important to know (or estimate) the BATNA of the other negotiator(s). Is their BATNA so strong that they can walk away from the negotiating table? Is it very weak? If they have a weak BATNA, you should be able to improve your negotiating results.

### **Reserve point**

As well as knowing the alternatives to negotiating, it is necessary to know the point at which you must stop negotiating and use your BATNA. That point is the reserve point, also called the *walk away point*. For example, in a simple sales negotiation, the lowest price the selling party will take is their reserve point. The highest price the buying party is willing to pay is their reserve point. Every issue, not just price, should have a reserve point. This is the point where you must stop talking. Sometimes the reserve point is the same as an offer from another party (your BATNA). The reserve point is not the target point – the target is what you would like to get. The reserve point is something you have to get. Generally, you hope to get a better outcome than the reserve point.

For example, if you are planning to reserve hotel rooms for a company event, you need to have a limit to how much you will spend. Your manager or accounting department may give you that limit, or you may set it yourself. If you do not have a limit, you may accidentally pay higher prices when you could have negotiated lower prices.

The following short case is about a Japanese company that was planning to buy a division (not all) of an American company. Please read it and consider the reserve points and BATNAs of the parties.

### **CASE 3.1: HELP! WE CAN'T STOP!**

During a two-year process, negotiations to buy a part of a US company stopped several times as the Japanese company rebuilt and strengthened consensus inside their company. When a European firm unexpectedly made a bid on the entire American business, the Japanese firm suddenly had to choose to complete the transaction or quit.

At the last moment, ... [the American company started to] think again about the Japanese side's no-deal option. They quickly reviewed other options open to the Japanese firm and confirmed their undesirability. Having worked through a grueling consensus process, virtually everyone at the Japanese company ... was deeply committed to doing this deal.

Now, rather than face the extreme organizational costs of "losing", the Japanese firm agreed to pay an extraordinarily high amount for the firm.

Adapted from *3D Negotiation*, pp. 89–90

### **Questions**

1. In the short case above, do you think the Japanese company had a good BATNA?
2. Compare the BATNA of the US company before and after the Europeans made an offer. How did the US BATNA change?
3. How would you try to improve the BATNA of the Japanese company?
4. What kind of planning did the Japanese company have about their reserve point?
5. Write in less than 20 words, the key error of the Japanese side.

6. Should you tell your BATNA? Why or why not?

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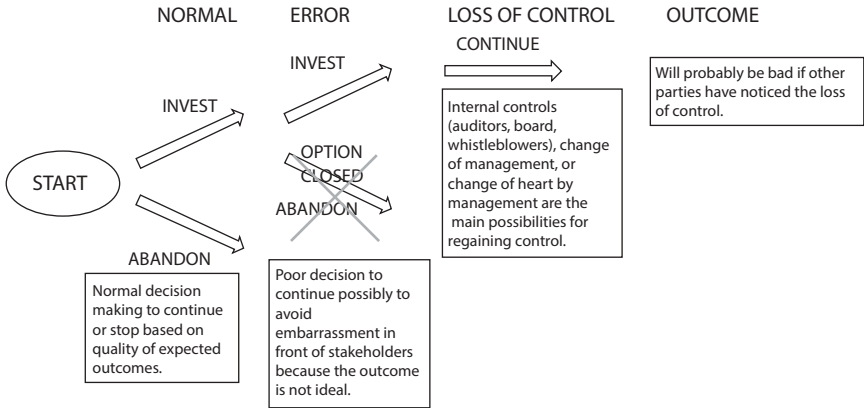
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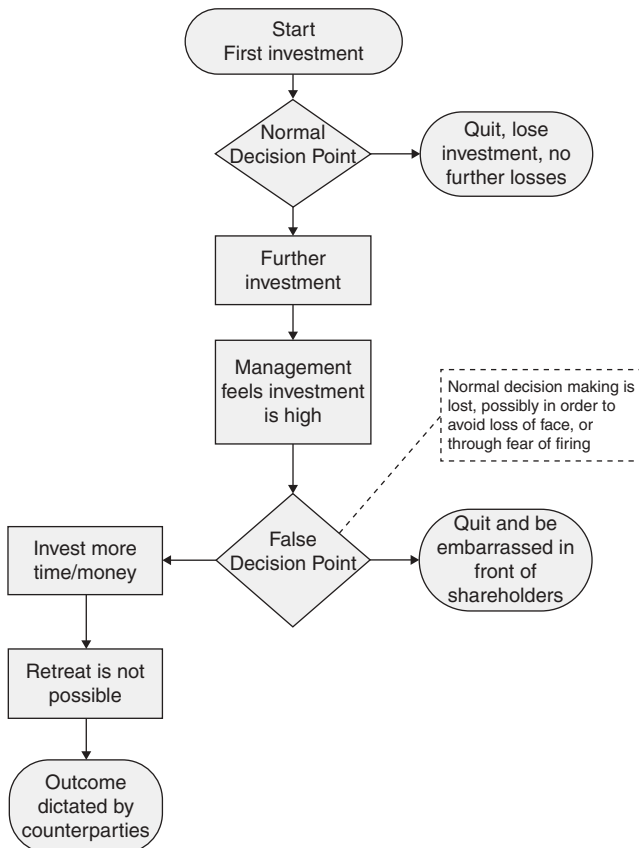
Consider the graphic in Figure 3.1. Did the Japanese firm in the case above make this kind of error?

**34** Core negotiation concepts



**FIGURE 3.1** In too deep – Decision tree

The flowchart in Figure 3.2 shows another way of understanding this error.



**FIGURE 3.2** In too deep – Flowchart

## *Do you agree?*

Yoshiaki Fujimori, President and CEO of JS Group Corp was quoted in Nikkei Weekly May 28, 2012 on negotiation success:

“The key to getting an edge in negotiations,” Fujimori stressed, “is to remain open to scrapping the deal.”

Your reaction to this statement: \_\_\_\_\_

\_\_\_\_\_

The notion of not being able to exit a project that is developing poorly is described in the Japanese context by De Mente (2004, pp. 21–22). According to DeMente, Japanese organizations may find quitting to be too upsetting and therefore they feel forced to commit resources even after failure has become obvious.

For more about strategic negotiation errors, see Appendix IV.

## *Section summary*

Develop a strong BATNA so that you can leave a negotiation that is not going well.

## **Negotiation error: watch your BATNA**

The following case shows a major US company that could not back out of a project after a public commitment that damaged their BATNA.

### **CASE 3.2: THE VERY PUBLIC OFFER**

In 2011, Hewlett Packard (H-P), the well-known electronics company that led Silicon Valley from its earliest days, acquired Autonomy, a leading UK software and services provider.

In early summer 2011, the CEO of H-P, Leo Apotheker, and his counterparty at Autonomy, Mike Lynch, discussed the possibilities of an acquisition. At the same time, other US companies considered making offers to buy Autonomy. In the following weeks, however, those other companies rejected acquiring Autonomy. Nonetheless, on August 18th, H-P announced in a press release that they would attempt to take over Autonomy paying about \$10.25B, a 64% premium to the stock price. The

same press release announced the closing of H-P's \$40B personal computer business, and the WebOS tablet and smartphone division, in order to refocus on software services. Lastly, the press release disclosed that H-P held \$13B in cash for any and all business use.

Observers and analysts immediately criticized H-P's plans and their stock priced dropped significantly, from about \$32 to about \$23 that week. The CEO was severely criticized and then fired on September 22nd. On September 28th, Oracle released a statement that they had found Autonomy too expensive at about \$6B (Marketwire, 2011). Nonetheless, the new CEO at H-P, Meg Whitman, approved the acquisition at a premium greater than 70% on October 3, 2011.

How was it possible for Autonomy to leap in value from \$6–7B to about \$12B in a few months in the eyes of H-P even as its CEO was criticized and fired?

To answer the above question, consider the following questions:

- What was Autonomy's BATNA? Was it strong or weak?
- What was H-P's BATNA before the press release of August 18th? And after the press release?
- What was in the press release that informed the world that H-P could not reverse course?

Some answers can be found in the H-P press release of August 18th:

[www8.hp.com/ba/bs/hp-news/article\\_detail.html?compURI=tcm:110-1051736&pageTitle=HP-to-Acquire-Leading-Enterprise-Information-Management-Software-Company-Autonomy-Corporation-plc](http://www8.hp.com/ba/bs/hp-news/article_detail.html?compURI=tcm:110-1051736&pageTitle=HP-to-Acquire-Leading-Enterprise-Information-Management-Software-Company-Autonomy-Corporation-plc)

And October 3rd:

[www8.hp.com/us/en/hp-news/press-release.html?id=1373462](http://www8.hp.com/us/en/hp-news/press-release.html?id=1373462)

And in these news articles (feel free to search for additional related articles):

[www.bloomberg.com/news/2011-08-18/hp-said-to-be-near-10-billion-autonomy-takeover-spinoff-of-pc-business.html](http://www.bloomberg.com/news/2011-08-18/hp-said-to-be-near-10-billion-autonomy-takeover-spinoff-of-pc-business.html)

<http://fortune.com/2012/11/30/how-hps-meg-whitman-is-passing-the-buck/>

### ***Comments on the H-P autonomy case***

Before the announcement of August 18th, H-P had the choice of buying other software companies, though none had seemed so appealing. However, with \$13B, it could have acquired several smaller companies or looked for other large companies or chosen other ways to make use of the money. Therefore, it had a reasonably strong BATNA.

Autonomy had a weak BATNA – they could continue as an independent company with little organic growth (known to H-P and other companies that

consider acquiring them) and try to make more acquisitions. They were not able to find another company to buy Autonomy. After the discussions with various companies in early summer 2011, H-P seemed to have the stronger alternatives.

However, after August 18th, Autonomy's weak BATNA was better than H-P's. The press release of August 18th showed that H-P was betting almost all its money (more than \$10B of \$13B total) on one company at the same time as starting a major restructuring that would end their PC business and its profits. To Mike Lynch at Autonomy, and most readers of the press release, it seemed H-P had no choice but continue with the acquisition. H-P had publicly destroyed their BATNA.

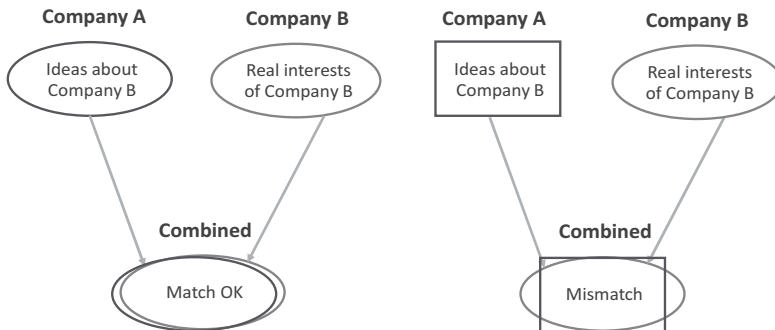
Unsurprisingly, Autonomy raised its price.

On top of damaging their own BATNA, H-P made it very difficult to stop the transaction because they had too much momentum in the project (full restructuring plus acquisition) as well as ego and credibility at risk among board members.

About a year after the acquisition, H-P admitted an \$8.8B loss.

## Understanding and misunderstanding interests

Be sure your ideas about the counterparties match the facts about their real interests. In the graphic in Figure 3.3 we can see the obvious problem when ideas about the counterparty are incorrect.



When ideas and reality about interests are correct, there will be a good match.

When interests are misunderstood, the parties will have trouble coming to agreement.

**FIGURE 3.3** Interests – Match vs mismatch



### CASE 3.3: CHINALCO RIO TINTO MISUNDERSTANDING OF INTERESTS

A Chinese/Australian business deal that would have seen the creation of a stable, diverse, multinational mining and metals company failed because the parties misunderstood some of the interests.

With strong reserves of ore in Australia and a strong market in China, the deal seemed sensible from a business viewpoint. Moreover, Rio Tinto was looking for opportunities to get cash in order to decrease its debt. ChinAlco, the Chinese aluminum processor, already owned 9% of Rio Tinto and was willing to pay for more. ChinAlco attempted to gain another 9% by quickly buying shares. They did this discreetly, buying on Friday in European markets. With the larger share, ChinAlco would have placed two directors on Rio Tinto's board.

But the deal collapsed. In the end it was the Australian government, not Rio Tinto or regulators or shareholders, who blocked the deal for political reasons (see Table 3.1 and Table 3.2).

### *Beliefs about interests*

**TABLE 3.1** Mistaken beliefs, ChinAlco and Rio Tinto case

<i>ChinAlco was incorrectly thinking that ...</i>	<i>Australian government was incorrectly thinking that ...</i>
<ul style="list-style-type: none"> <li>• The Australian government is not important in this process;</li> <li>• The Australian government will not be worried about our breaking the 15% share limit for foreign ownership;</li> <li>• The Australian government will not see a threat in the presence of 2 directors picked by a Chinese partner;</li> <li>• The Australian government will not care that ChinAlco is majority owned by the Chinese government;</li> <li>• Rio Tinto can influence government enough to protect the deal;</li> <li>• If we do it quietly but inform them quickly, there will be no problem.</li> </ul>	<ul style="list-style-type: none"> <li>• ChinAlco wanted to direct Rio Tinto's resources only into China;</li> <li>• The Chinese government made the decision to gain more shares of Rio Tinto;</li> <li>• The quick move to gain shares was the start of a longer campaign to gain more shares and power;</li> <li>• ChinaAlco's shares would make it impossible for Rio Tinto to develop as a globalized leading Australian company.</li> </ul>

**TABLE 3.2** Real interests, ChinAlco and Rio Tinto case

<i>ChinAlco</i>	<i>Australian</i>
Diversification of ChinAlco. Gain experience with a respected foreign business. Gain some control (but not dominant) over supplies from Australia. Summary: Wanted to diversify ChinAlco from aluminum.	Strong interest in sticking to the 15% foreign ownership limit. Strong interest in developing a powerful Australian company. Felt it was necessary to discuss such developments in the public media (the political leaders were very upset by the “secret” attack). Very sensitive to ownership by a foreign government. Summary: Would not consider the deal without extensive public discussion.

[https://money.cnn.com/2009/06/05/news/international/rio\\_chinalco.reut/index.htm](https://money.cnn.com/2009/06/05/news/international/rio_chinalco.reut/index.htm) <https://www.ft.com/content/a2ade4ee-51ff-11de-b986-00144feabdc0> <https://www.ft.com/content/ab261d34-56b5-11de-9a1c-00144feabdc0>

Exercise:

1. As the Australian or Chinese side, propose some ways that this can become a win-win situation considering the real interests of both sides.
2. Now try to include some ideas that are *more than* win-win, ideas that increase the potential benefits to both sides, again considering the real interests of both sides.
3. Propose your ideas to your counterparties from the other country.

Section Terminology

*Probe*: to explore and push for deeper, specific information.

### **Section summary**

Learn what you and the other negotiators really want, and try to satisfy those needs.

### **Principle based negotiation**

Principle based negotiation is an approach described by Ury and Fisher in their 1991 book *Getting to Yes*. The approach proposes that all parties focus on *principle* (what they generally need and want) not on *positions* (specific points that can or cannot be given away).

Because specific positions are essentially “win-lose”, they result in imperfect negotiations and imperfect results. Compare the left side of the Table 3.3 (positional, old-style thinking) to principle-based thinking.

**TABLE 3.3** Soft vs hard, Ury and Fisher

**Problem:**

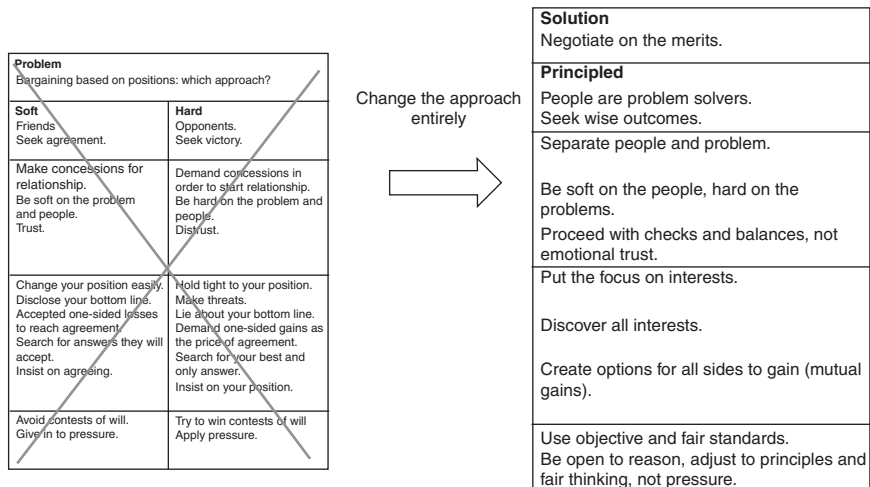
*Bargaining based on positions: which approach?*

<i>Soft</i>	<i>Hard</i>
Friends. Seek agreement.	Opponents. Seek victory.
Make concessions for relationship. Be soft on the problem and people. Trust others.	Demand concessions in order to start relationship. Be hard on the problem and people. Distrust others.
Change your position easily. React to threats. Disclose your bottom line. Accepted one-sided losses to reach agreement. Search for answers they will accept. Insist on agreeing.	Hold tight to your position. Make threats. Lie about your bottom line. Demand one-sided gains as the price of agreement. Search for your best and only answer. Insist on your position.
Avoid contests of will. Give in to pressure.	Try to win contests of will. Apply pressure.

Adapted from Ury and Fisher (1991), *Getting to Yes*, p. 13.

Ury and Fisher (1991) show us out-of-date thinking, with only two choices, neither of which is suitable (see Table 3.3).

Ury and Fisher then show the way handle this Soft/Hard approach to negotiating (see Figure 3.4).



**FIGURE 3.4** Focus on problems, not positions

Source: Adapted from Ury and Fisher (1991), *Getting to Yes*, p. 13.

Ury and Fisher see a negotiation as “people talking about things they care about” and a chance to solve problems. This view is a positive starting point for progress. The opposite view (which we will avoid) is to see a negotiation only as “a chance to get something”.

Also, Ury and Fisher highlight two points that we have read about already:

- Understanding the interests of the parties.
  - Interests include all sorts of things: money, reputation, future opportunities, relationships, respect, lowering risk, personal feelings, and so on.
- Increasing the potential benefits beyond expectations at the start of negotiations.
  - Finding a new activity that increases the benefits to all parties: a new area of business, blocking a competitor, developing new resources, creating a new product and so on.

Additionally, they tell us to:

- Separate the people from the problem;
- Focus on interests not positions;
- Invent options for mutual gain;
- Insist on using objective criteria.

### ***Game theory***

If you like thinking about game theory, you will enjoy this following discussion. You can see that win-lose and win-win negotiating are similar to the “Prisoner’s Dilemma” game.

Win-lose negotiating is “imperfect” with poor results for one or all parties but Win-Win negotiating is also not perfect. Why not? Write your ideas here.

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Examine Figure 3.4... is “pretty good” the best we can hope for?

It is sometimes possible to improve “pretty good” through synergy and creating new value. Synergy opportunities allow negotiation parties to get new benefits together that they could not manage alone.

If win-win is not perfect, is win-win + new value creation a better way? Is it perfect?

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## 42 Core negotiation concepts

	Low	← Value sharing →	High
Value creation High → ← Low	Great for one party, but terrible for others		Pretty good for all parties
	Terrible for all parties		Great for one party, but terrible for others

**FIGURE 3.5** Value creation vs Value sharing

Source: Adapted from Negotiation Analysis, Raiffa (2002)

Go to <http://money.howstuffworks.com/personal-finance/budgeting/negotiation5.htm> to see another explanation of this problem.

Thus, you need to look for:

- 
- Common interests
  - Mutual value creation
  - Fair sharing of value creation
  - Synergy
- 

Synergy sounds nice...what is it? Synergy (syn=together; erg=move) means moving together in a way that could not be done alone. Try to think of examples of possible synergy in negotiations that have been discussed previously in this textbook, such as the ChinAlco case.

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### **Section summary**

Negotiate about the key goals and principles; do not fight hard for specific positions because these may lead to dead ends and limited value sharing.

# 4

## STRUCTURE AND PLANNING

### Getting to start

If your organization is new or the reasons to talk are not clear, you can expect some difficulty in getting to the first conversation. You may have to do some prepositioning in order to get an opportunity to interact (Stein, 1989). Two basic approaches are useful here:

- Threat, and
- Overwhelming benefit.

Threat works by presenting the other parties with a convincing risk of trouble that is best solved by negotiation. Overwhelming benefit works by making the possible gains of talking seem too appealing to walk away from. In both cases, we can say that you must show that negotiating is better than the other parties' BATNA.

### *Threat*

Threats are a risky approach and should be used only where the stakes are high and the relationship is already damaged. Consider the case of Disney in Europe below.

#### **CASE 4.1: EURODISNEY 1992–1994**

In a widely discussed business case, Disney started an amusement park in France near Paris. The park had a disappointing start with low visitor numbers and numerous difficulties. After some years, Disney found itself in severe financial trouble. They needed to renegotiate and restructure their debt burden, but the banks were not interested in negotiating.

Boldly, Disney informed the banks that they would have to renegotiate, or Disney would default and abandon the park, leaving the banks with a huge, unpaid, expensive, and nearly useless property. The banks came to the table, and the interaction started. Eventually all sides agreed to easier repayment terms, the Disney operation is still in business, and the bank loans were paid.

Based on the case study above, was Disney's threat successful? \_\_\_\_\_

What did Disney's threat include? \_\_\_\_\_

Explain why it was or was not an acceptable prenegotiation move. \_\_\_\_\_

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### ***Overwhelming benefit***

Showing overwhelming benefit is less risky and is likely to start the relationship on a positive footing. Negotiators can do this by presenting the benefits of their product, service, or ideas in a very positive light. Show the maximum benefit in the best case scenario that applies directly to the parties you want to interact with. In other words, you have to successfully sell your idea to the other parties before you can negotiate the details. When showing overwhelming benefit, you must not of course lie or misrepresent, however you may ethically show "best possible cases". Later, as you negotiate, all parties can develop the offers and ideas together in order to agree suitable services, prices, actions, and so on.

### **Building momentum**

Sometimes negotiations are successful because the parties develop confidence about dealing with each other. Even negotiators on the opposite sides of difficult issues can develop trust, confidence, and empathy over time. Having successful agreements helps to build confidence among all parties. But how can you develop confidence the first time you negotiate a deal?

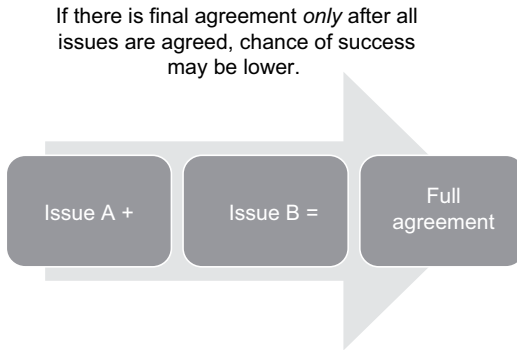
One way is to arrange the parts of the negotiation so that agreement can be reached on some easy parts early in the process. With early successes, all parties may feel more comfortable with difficult issues later.

However, it could be a serious error to manage all the easy parts first: all your work could be lost if the last points in a negotiation cannot be resolved (see Figure 4.1).

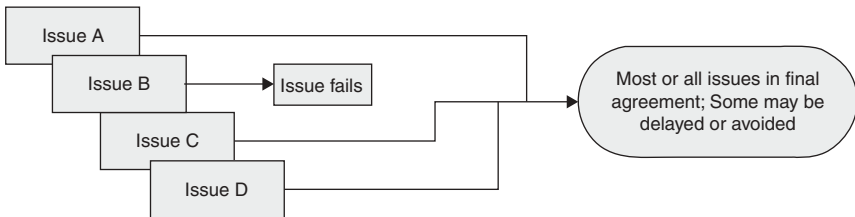
Disadvantages: Each part can cause all parts to fail.

Advantages: You can integrate issues and link them together. By the end, both sides are committed to agreeing, "no-deal" becomes increasingly less appealing. However, be careful to avoid the error of being "in too deep" as discussed above.

Another approach is to treat some or all issues separately. You might be satisfied to resolve some but not all of the issues (see Figure 4.2).



**FIGURE 4.1** Strict ordering of issues



**FIGURE 4.2** Flexible ordering of issues

**Disadvantages:** One side may walk away early leaving unresolved issues. Agreement on key issues may fail. All issues may not be integrated as well as possible.

**Advantages:** Each success creates good feeling and helps the entire project; flexibility in adapting to the other parties.

### ***To discuss with your partner – the best order***

Easy issues first?      Helps build momentum, but the last items may be too tough and process may collapse. You may lose opportunities to integrate.

Easy things last?      You may resolve deepest problems early, but there is no chance to build momentum, confidence, and successes in advance.

Your comments: \_\_\_\_\_

### ***Is this the best way?***

- Put some but not all the easy items in the beginning.
- Link some issues or groups of issues to allow good integrative negotiating.
- Even if you separate some issues, you should generally integrate issues where possible – do not allow all issues to become separate.
- Be flexible, choose the way most suited to that negotiation.
- Be flexible, unlink and relink issues if necessary.
- Agree to a rough approach (road map) with the other party.



## 46 Structure and planning

Your comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Useful hint: You can of course agree with your counterparties about the order in which to accomplish the negotiation tasks. Discussing the order and the reasons for it will help build the relationship.

### **Process moves**

Another way to move the negotiation is to consider process moves (Kolb and Williams, 2001) that help the parties organize issues, bring problems into the open, discuss interests, and handle interactions. Process moves have influence on what is discussed and how. For example, an agenda of points to discuss, encouragement to speak out, encounters away from the formal discussion table, and expert speakers are moves that may help a negotiation to progress.

### **Section summary**

Small successes can help build relationships and confidence. Also, after many successes and much time, all sides may be less willing to give up and use their BATNA.

## **3D negotiation**

Preplanning is a key teaching of this textbook. No person or team can manage a business negotiation without planning – lots of planning!

You know that 3D means *three dimensions*. The idea of “3D” Negotiation is for negotiators to think on three levels about any negotiation. The three dimensions are described in Table 4.1.

**TABLE 4.1** Three dimensions of negotiation

<i>Tactics</i>	<i>Deal Design</i>	<i>Setup</i>
At the table	On the drawing board	Away from the table
People and process	Value, substance, and outcomes	Architecture
Build trust, handle hardball approaches, bridge cross cultural gaps...	Create agreements that maximize value for both sides, improve on goals, are more sustainable...	Determine participants, BATNA, overall sequence, choices...

Source: *3D Negotiation*, p. 19

These dimensions do not come one after the other, they can happen at the same time or switch on and off. However, the Setup and Deal Design dimensions mostly take place in advance of interacting with the counterparties (the Tactics dimension). These two dimensions are largely about preparation; however, the negotiators can work on these dimensions any time.

### ***Tasks to be done in the setup dimension***

#### ***Determine the participants in the negotiation***

Decide on the best team members for your side. Decide who will lead the team – an engineer, a sales and marketing person, a high-level manager, or another person? What skills and personalities do you want to have in your team? How many people should be on your team?

Be sure to consider the expectations of the other side as well as the issues in the negotiation as you make these decisions. At this point a basic stakeholder analysis is necessary. List the key people and organizations and their main interests. Later, complete a more thorough analysis of all stakeholders and their interests. A thorough stakeholder analysis will be helpful for understanding the immediate surface issues as well as deeper issues. See Appendix VI for more on this.

In addition to your own personnel, you may be able to pick the people on the other sides that you will talk with. For example, you may want to approach a key figure in a company in order to avoid a person with a bad reputation. You may prefer to deal with someone you already know, someone who is respected in the industry, someone with a reputation for negotiating well, a high-ranking person, a very skilled engineer, or other individuals for other reasons. In a very complex negotiation, you may want to have technical information presented by an expert individual or organization that is neutral to the negotiating parties in order to increase the knowledge of all parties. You may be able to include or exclude some organization or individuals in advance by setting rules that other negotiation partners must agree to if they want to participate.

#### ***Determine your BATNA***

Thoroughly investigate your alternatives to the negotiation. The stronger your BATNA, the more negotiating room and comfort you will have. As you investigate your BATNA, try to make it stronger. Even if the making your BATNA stronger requires a lot of time, start the process.

Suppose that strengthening your BATNA will take more time than the planned length of your negotiation. Explain why it is a good idea to do it:

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*Determine the BATNAs of all parties*

It is not enough to know your own BATNA. As discussed above in the BATNA section, you will need to know the BATNA of the other side. Now is the time to learn about it and to weaken it. Why should you try (or not try) to weaken the BATNA of the other side? \_\_\_\_\_

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How might you be able to weaken the BATNA of another negotiation partner?

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*Overall sequence*

During the early planning, you should check whether there any issues that must be resolved before other issues. For example, it might be necessary to determine a rough timeline before agreeing to milestones for portions of a project.

Your early planning and checking might identify some issues to be done in sequence...however, once the negotiation starts, it is generally best not to stick to a rigid plan. A good negotiator reacts flexibly as new information appears.

*Approximate timing and timescale of the negotiation*

Consider the timing of the start and finish of the negotiation. Some points to include in the planning:

When

- Calendar year (major holidays or vacation periods to avoid);
- National holidays in your country and the countries of other negotiation partners;
- Fiscal year (the very end of the fiscal year is usually extremely busy);
- Business seasons (avoid times of year that are very busy for the other organizations).

How long

- Planning period on your side;
- Estimated number of days, weeks, months, or years to talk;
- Time constraints due to availability of resources;
- Time expectations of the back table.

### *The back table*

There is a hidden partner in almost every negotiation, the “back table”. This refers to a boss or coworkers or other group that the negotiators will report to. Even the CEO reports to someone: the board! The back table (people or groups) is sometimes called a *constituent group* (Ware, 1980). The early phase of planning is the time to be sure that you and your back table are in close understanding about all expectations, limitations, and issues related to the negotiation.

One of the limitations you must agree about with the back table is time. Often, people who are not part of the negotiation have the expectation that everything will be resolved quickly. The truth however is often very different. In fact, the higher the quality of communication in the negotiations, the more likely that questions will arise requiring more research time. Good negotiations usually mean good solutions. Good solutions, of course, require time to develop. The lesson is clear: you will need lots of time, maybe more than your peers and bosses expect. Be sure to change their expectations.

See Chapter 8 for more discussion about the back table.

### *Research to do list*

Develop a list of steps for your research and a list of specific things to learn about. Your research “to do” list will increase in size as you go on. But the list should start by fulfilling the phrase, “Know the facts, know the people.” View the video of Dr. Kurt Biedenkopf at <http://bit.ly/1riIzdN> for the comments of this experienced negotiator. If the link does not work, visit the YouTube channel for “The Negotiation Challenge” and look for the video titled “Kurt Biedenkopf on negotiations” there. His summary in the first 25seconds packs tremendous insight and power.

Biedenkopf’s simple phrase, “know the facts, know the people”, is a proposal to learn in detail about the negotiation issues and the people and organizations related to them. This means knowing something about the personalities of the negotiators on the other teams. It may be possible to learn about them in advance as well as to learn about them through interactions during the negotiations.

As for the facts...it is up to you to search every possible source, on line or not, for relevant facts and information. Sources you might include:

- Recent newspaper articles;
- Old newspaper archives;
- Specialist industry periodicals;
- Court records;
- Network of business acquaintances, friends, and family;
- Government contracts;
- And so on...

### Checklist

Develop a checklist of the basics that you need to achieve during negotiation. See the next section for more info.

### Section summary

Most of the work in negotiating happens before the negotiation. Use multiple planning methods to prepare.

### Basic planning

*When preparing for a negotiation you need to prepare your negotiation shopping list. This is a list of the things you want to get out of the negotiation.*

*Bare Knuckle Negotiating, Hazeldine (2006), p. 35*

Prepare a list of what you want to get from your current negotiation.

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The simplest form of planning is the shopping list mentioned above, a checklist of things you reasonably hope to accomplish. A checklist is a good starting point. But we can expand a checklist easily to make it more useful.

1. Make a list of results that you *have to* get. These necessary items are ones that you must accomplish if the negotiation is to be better than your BATNA.
2. List the results that you would *like* or intend to get additionally, but that are not absolutely necessary.
3. List the things that you can reasonably *trade away* in order to get what you must have and want.

Use the above three categories to create a HIT list (LaFond, Vine and Welch, 2010):

H – Have to get (must have these reserve point items or you will walk away)

I – Intend to get

T – Trade in order to get H and I items

Read this short case and create a HIT list for the things you need.

### **CASE 4.2: THE RIGHT HOTEL, THE RIGHT DEAL**

You are seeking a large hotel to host a convention in Singapore. There are many hotels and the convention will start the year after next, so you have much time and several choices. Before you talk to the hotel you prefer most, you must think about the needs.

You expect to have about 1000 attendees over 3 days. The hotel has only 290 rooms so you hope to reserve all or most of them for your attendees until a little before the event. It would be best to block them until two weeks before the event, but really, the attendees should plan and reserve four to eight weeks in advance. The retail cost of a hotel room is \$250 US (about 2000 HKD), and this is certainly too expensive for most of your attendees, so you feel it is necessary to lower the price to at most \$190 per night. You could guarantee some of those rooms will be filled, but you are nervous about guaranteeing all of them, of course. Breakfasts at the hotel are quite expensive in addition to the hotel room, so you would like to secure free breakfasts for your ten staff members and a 20–50% discount for all conference attendees. You know that the hotel usually offers free access to the swimming pool, but you have heard the pool is small and crowded, so it might not really be useful for your attendees. The fitness room, however, is supposed to be quite good, but is not free.

Now consider the items you need to get, would like to get, and could trade. List them appropriately in Table 4.2.

Use the simple table (Table 4.2) below for your HIT list.

The HIT list in Table 4.2 is easy to manage and useful, but it is only a starting point. We can improve on it. One of the improvements will be adding steps between your starting point and your acceptable minimum reserve point.

**TABLE 4.2** HIT list

<i>Have to get</i>	<i>Intend to get</i>	<i>Tradable</i>
Issue 1		
Issue 2		
Issue 3		
* Note that “have to get” includes “have to get rid of”		

**TABLE 4.3** Expanded HIT list with steps

<i>Have to get (reserve)</i>	<i>Steps (intend to get)</i>	<i>Don't need (tradable)</i>
Price at or below: \$200/night	Start by asking for \$145; Accept \$155 if free wireless; \$175 if free wireless and gym, pool and 50% breakfast discount; \$190–200 if the hotel has all of the above and additional suitable services to offer.	Decide to trade some (or any) amenities and conveniences (get them or give them up) in order to attain an intended target or reserve point.

The expanded HIT list in Table 4.2 is a simplified version of the Raiffa Scorecard discussed later in this chapter. The Raiffa Scorecard is more powerful and useful, but first we will discuss backward mapping as a way to structure and plan the negotiation.

## Identifying interests

In this section we will go much deeper into the process of negotiation planning. Understanding the interests of the parties is a vital step in planning. Your notes should include your interests and what you guess or know about the other parties' interests and goals.

...what are valid interests to include?

...all sides (you and *them*)

Please choose some interests that could be included in your notes:

<input type="checkbox"/> your time restrictions	<input type="checkbox"/> their time restrictions
<input type="checkbox"/> your maximum price	<input type="checkbox"/> their minimum price
<input type="checkbox"/> your most and least important issues	<input type="checkbox"/> relationships among their negotiators
<input type="checkbox"/> your long-term hopes	<input type="checkbox"/> recent trend of their stock price
<input type="checkbox"/> your _____	<input type="checkbox"/> their priorities

## How to determine interests

Don't take your boss's list of preferred outcomes as the final list of your own interests, investigate all interests of all parties thoroughly. Most business negotiations involve money, but there may be many more issues and interests. Start with the ones in the interest grid below and add to the categories.

**TABLE 4.4** Simplified interest grid

<i>Interest Category</i>	<i>Our understanding of this issue</i>	<i>Their understanding of this issue</i>
Financial		
Reputational		
Personal		
Staffing		
Capacity		
Business cycle		
Regulatory		
Timing		

### ***Perspective taking as a way to identify interests***

In this approach, negotiators try to understand the goals and difficulties in a negotiation from the point of view of other sides. However, they concentrate on the desired targets and goals more than the feelings of other sides. Galinsky, Maddux, Gilin and White (2008, p. 382) used the phrase, “Try to understand what they [the other side] are thinking in their situation.” In that research, perspective taking resulted in greater joint gains and individual gains. Perspective taking is done with little or no interaction with the other sides, therefore it tends to result in less relationship growth and empathy. That means there is less chance of developing a bias such as liking or disliking the other sides.

To use perspective taking effectively, consider the other party and their possible ideas about issues in Table 4.4, and consider the perspective the other parties may have on each interest. The result could be a large number of perspectives! Further research and interaction with the other parties will help you identify whether they are accurate or not.

#### **CASE 4.3: PROFESSOR’S PATENT**

Suppose that you are trying to negotiate use of a patented process for your startup company. You do not have much money, so you prefer to pay a royalty as sales develop in the future instead of buying the patent outright. On the other side of this negotiation is a professor who owns the patent and is near retirement and currently working at a university in Malaysia. What do you think might be



the perspectives of that professor? Taking his perspective, write down what he might be thinking about this deal:

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Compare your ideas with another student and be prepared to discuss with the group.

### **Next steps**

To dig deeper into interests, Lax and Sebenius suggest these steps in *3D Negotiating*, p. 76:

#### Four Practices That Help You Get Interests Right

1. Ask, listen, probe
2. Use public sources to map interests
3. Get insight from internal sources
4. Get insight from knowledgeable advisers

We have already discussed the first one, asking and listening. The third one we can understand as asking people you know in your network or in your company who might have some insight or information about the other party. The fourth one we can understand as asking professionals and consultants beyond your co-workers. Let's consider the second one ... "public sources".

Public sources means looking widely at newspaper articles, special industry journals, newsletters, internet chat rooms, speeches, YouTube videos, books, blogs, comments by experts, SEC filings, tax information, and all other sources that are *legally and publicly* available.

Important: it is also possible to get information by unethical methods: misrepresenting yourself to people familiar with the other parties and the planning; stealing data; paying another person to steal data... none of these methods are acceptable in the real world of business. These methods will damage or destroy business relationships with negotiating partners and others when discovered. Moreover, they may result in legal troubles.

Exercise: Discuss with your partners how you will use public sources to learn about interests for the final team negotiation.

Write down some sources and what you expect to find in them:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

**TABLE 4.5** Brett's Negotiation Planning Document

<i>Issue</i>	<i>Self</i>		<i>Other</i>	
Investment	Position: \$3.5 mil		Position: possibly \$2–4 mil	
	<b>Priority Very high</b>	timing-ASAP	<b>Priority High</b>	ROI; timing of payment
	<b>Priority</b>		<b>Priority</b>	
	<b>Priority</b>		<b>Priority</b>	

Source: Brett (2007)

Generally, you should consider all possible interests when planning for the negotiation. In the end, you should try to make a final list with notes. You can carry a list like this to the negotiating table with you.

See Appendix III for a planning sheet based on Brett's planning document.

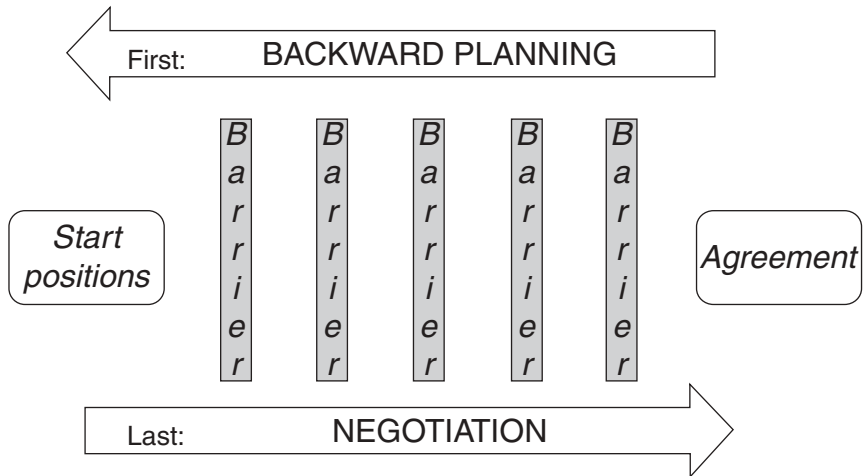
## Backward mapping

In their book *3D Negotiating*, Lax and Sebenius suggest “mapping backward” as a process for crafting the agreement and the negotiating strategy. First, determine what your final agreement should look like. Next, go backward towards the point where research starts by understanding the barriers to agreeing (Figure 4.3). As you identify and understand each barrier to the agreement, you can prepare positions and offers that will make a final agreement possible. After that planning, start interacting and talking with the counterparties and move forward to the final agreement.

## Deal breakers

The processes of investigation, research, planning, and especially, backward planning, should help you identify problems that are so difficult they cannot be overcome. These may be deal breakers. It is important to identify possible deal breakers and confirm whether or not they are unresolvable early in the process of the negotiation. If the deal breakers cannot be resolved, they will stop the negotiation. Leaving deal breakers until the end of the talks will result in the complete loss of time and effort invested.

Deal breakers often are items that one side requires with no options for adjusting or avoiding. In the ChinAlco Rio Tinto case described above, 18% ownership by a foreign company was a deal breaker in the eyes of one stakeholder, the Australian government.



*Work backwards from the targeted agreement when planning*

**FIGURE 4.3** Backward planning

Sometimes inexperienced negotiators feel they must gain a certain outcome and therefore they hold tight to a position. If the position is too aggressive and the negotiator cannot be flexible, it may become a deal breaker, destroying the opportunity to complete.

### ***Game theory***

You may recognize this backward mapping approach from Game theory: backward induction. Game theory shows how powerful a tool this is for choosing the right path to the outcome you want. The process is the same: identify the possible outcomes; select the best one you can reasonably attain; understand the steps necessary to reach that outcome by working backwards through the interests and needs and positions of the other parties.

Consider your expectations as you develop the “deal you want”. Howard Raiffa writes that even experienced negotiators generally expect better results than they really get. Therefore, be sure that the deal you want is really acceptable to the counterparty.

In the process of mapping backwards, points in the “deal you want” must not appear in “unacceptable to the other side” nor in “not agreeing”. Compare these carefully to see if there are conflicts you must resolve before the negotiations start.

You can find blanks prepared for backward mapping in Appendix III. Appendix III contains various planning documents. Use all of them or only the ones you feel comfortable with.

Now consider the next negotiation in this class. Please consider the final goal of your side and your counterparties. Draw a full page “map” approximately following backward mapping from Lax and Sebenius.

### Section summary

Backward mapping is a good tool for planning. To use this or any other planning tool, you must know the interests of all the parties in the negotiation.

### Priority and outcome mapping

It can be confusing to track all issues and the possible outcomes. Howard Raiffa, in his book *Negotiation Analysis: The Art and Science of Negotiating* offers a practical way to manage priorities and possible outcomes. He suggests the Table 4.6 to organize the interests and outcomes and he suggests using points that add up to 100 to evaluate importance of issues and the benefits of the outcomes.

**TABLE 4.6** Sample Raiffa scorecard

<i>Issue</i>	<i>Issue value</i>	<i>Outcome</i>	<i>Outcome value</i>
1 cost	15	a. over \$15 mil	15
		b. \$15 mil	12
		c. \$10 mill (reserve)	7
2 investment	10	a. \$3 mil and shared staff input	10
		b. \$3 mil	7
		c. \$1 mil	4
		d. none (reserve)	0
3 intangible property	20	a. retain all with full control	20
		b. retain key portions	17
		c. retain less important items	15
		d. sell all (reserve)	10

(Continued)

TABLE 4.6 (Cont.)

<i>Issue</i>	<i>Issue value</i>	<i>Outcome</i>	<i>Outcome value</i>
4 joint development	30	a. projects Alpha, Beta, and Gamma	30
		b. only project Alpha	15
5 joint access to staff	25	a. share IT and R&D staff and skills	25
		b. share IT staff and skills	20
		c. share administrative tasks and skills	10
		d. none	2
Total=100 maximum	100	Total of selected outcomes	

*Adapted from Negotiation Analysis, Raiffa, Richardson, and Metcalfe. (2002, p. 217)*

A blank scorecard can be found in Appendix III of this booklet.

### ***How to make and manage a Raiffa scorecard***

This scorecard is a helpful way to simplify the issues in a negotiation and easily understand the choices you might pursue or trade.

- Step 1: write down the key issues;
- Step 2: weight the issues by importance with points adding up to 100;
- Step 3: write down alternative possible outcomes for each issue;
- Step 4: set points for each possible outcome, up to the maximum for that issue;
- Step 5: consider all the points, you can now see priorities and preferences – use this information to structure your negotiation and decide what you can trade or abandon in order to get something more valuable;
- Step 6: As you negotiate, track the outcomes that you agree to. Of course, you must remain flexible and adjust to new value possibilities that you may discover during the negotiation.

Practice: Fill out the scorecard in Table 4.7 for one of the cases in this course.

### ***Evaluating success***

The Raiffa scorecard can also help evaluate success. After a complex negotiation, it is often difficult to know if you did well or not so well. A glance at the scorecard

**TABLE 4.7** Blank Raiffa scorecard

<i>Issue</i>	<i>Issue value</i>	<i>Outcome</i>	<i>Outcome value</i>
Total=100 maximum	100	Total of selected outcomes	

*Adapted from Negotiation Analysis, Raiffa, Richardson, and Metcalfe. (2002, p. 217)*

**TABLE 4.8** Sample Raiffa scorecard for evaluating results

<i>Issue</i>	<i>Issue value</i>	<i>Outcome</i>	<i>Outcome value</i>
1 cost	15	a. over \$15 mil	15
		b. \$15 mil	12
		c. \$10 mill (reserve)	7
2 investment	10	a. \$3 mil and shared staff input	10
		b. \$3 mil	7
		c. \$1 mil	4
		d. none (reserve)	0
3 intangible property	20	a. retain all with full control	20
		b. retain key portions	17
		c. retain less important items	15
		d. sell all (reserve)	10
4 joint development	30	a. projects Alpha, Beta, and Gamma	30
		b. only project Alpha	15
5 joint access to staff	25	a. share IT and R&D staff and skills	25
		b. share IT staff and skills	20
		c. share administrative tasks and skills	10
		d. none	2
Total=100 maximum	100	Total of selected outcomes	66

*Adapted from Negotiation Analysis, Raiffa, Richardson, and Metcalfe. (2002, p. 217)*

would show quickly the overall results. The shaded lines below are the agreed outcomes, so we can see that the negotiators got 66 out of 100 points for getting 1b, 2b, 3a, 4a, and 5d.

Maybe they should have provided better reasoning for issues 3 and 4! On the other hand, they were successful with 5a, and that was a very important issue and the best outcome. Perhaps if Project Alpha goes well, they can renegotiate in order to extend the agreement to include Beta and Gamma.

**Section summary**

Outcome mapping is a good tool for planning. To use this or any other planning tool, you must know the interests of all the parties in the negotiation.

**The sequence of talk at the table**

After considering the setup and planning that must occur before talks start, we still need to understand the best sequence of events at the table. What to discuss first? Is there anything that should be done early on? Or avoided?

Consider the following elements of negotiation. Write a number before each one to indicate what should come first, second, third, and so on.

- 
- |  |  |
|--|--|
| <input type="checkbox"/> Major issues, get to the point! | <input type="checkbox"/> Small talk                            |
| <input type="checkbox"/> Company history                 | <input type="checkbox"/> Rules and protocol                    |
| <input type="checkbox"/> Problem solving                 | <input type="checkbox"/> Agenda                                |
| <input type="checkbox"/> Information sharing             | <input type="checkbox"/> Introductions and personal experience |
- 

Please write your reason for the item that you chose as #1. \_\_\_\_\_

\_\_\_\_\_

Let's consider the pros and cons of starting with each point.

*Agenda:* Agreeing to the agenda is an important process that may be quite complicated. Each party may have reasons for starting with certain issues. Because it is complex, and possibly divisive, it is better not to start with this.

*Company history:* Each company has its own history that helps define what it is and how it works. This information is important to understanding interests and motivation. However, it may be useful to first understand the people.

*Information sharing:* The process and degree of information sharing develop with interaction. It cannot be pushed into a first activity at a first meeting. Instead it will occur over many meetings.

*Introductions and personal experience:* This activity is a good way to start any meeting, especially when participants are new to each other. This activity and small talk can mix easily together. Some individuals and cultures will make this longer or shorter based for example on preference, rank, and comfort level.

*Major issues:* Get to the point! It is best not to start here as parties are likely to come directly to a conflict or deadlock. It is important to first understand people, interests, organizations, and details in order to solve possible problems.

*Problem solving:* This activity requires time and much information. It cannot be completed successfully in a first meeting.

*Rules and protocol:* This topic is important to establish early in the relationship in order to avoid unintended false steps, insults, and bruised egos. Usually this is best placed after introductions and small talk.

*Small talk:* A good way to start any meeting. It helps to create a positive atmosphere and starts the flow of information sharing. Some individuals and cultures will prefer more or less small talk. Prepare accordingly with suitable casual topics.

### ***Section summary***

Start face to face interactions with introductions and possibly gift exchanges and small talk. Use these interactions to build rapport and to start the flow of information.



# 5

## SOME CULTURAL CONSIDERATIONS

### Top down/bottom up

Please read about the two approaches in Table 5.1; which feels most comfortable to you?

Neither approach is perfect or “correct”. Be flexible and work with your counterparties and team members to view negotiations from *both* approaches. Your counterparties may not even realize that they like to progress “top down” or “bottom up”.

Design your negotiation approach(es) in advance. A good negotiator learns to design the negotiation before starting the actual negotiation meetings. Before means “long before” because time is necessary to consider, learn, and redesign.

**TABLE 5.1** Top down, Bottom up

<i>Top down</i>	<i>Bottom up</i>
This means getting the global “large picture” goals in order <i>before</i> dealing with details and specific issues. As the overall picture becomes clear, the logical path to achieving it also becomes clear.	This means dealing with specifics before coming to a global conclusion. As the specifics are discussed and agreed, they build the larger, final picture.
Example: generally including or excluding some areas of activity before working out details.	Example: negotiating the details of an agreement (order volume, delivery time, unit price, services etc.) before coming to broader issues.
Does it start from an agreement on general principles and proceed to specific items [top down], or does it begin with an agreement on specifics, such as price, delivery date, and product quality, the sum total of which becomes the contract [bottom up]?	

Source: Salacuse (2004)

If you can, agree with the other party in advance about which approach to use in order to avoid misunderstandings.

### ***Top down, bottom up and culture***

This dimension [top down/bottom up] captures whether negotiators build agreement by negotiating specifics, such as product characteristics, price, and terms of delivery, or whether they start from general principles and then proceed to specific items.

*(Salacuse, 2004)*

Finnish respondents strongly preferred a top down approach, with 85% positioned on that end of the continuum ... Indian responses stood in sharp contrast with more than 50% preferring a bottom-up approach, although once again a sizeable portion (27%) located at the top-down end. The Turkish response pattern leaned toward a top-down approach, while Mexican and US patterns reflected no strong preference.

*(Metcalf et al. 2006)*

**Cultural issues:** If possible, establish the mutual starting point (top or bottom) before you arrive at the negotiating table. In the real world, you may come to know what to expect from certain people, companies, or within a country or region. Do people from the western part of your country prefer to start top down while people from the eastern part of your country prefer to start bottom up? What about people from different parts of China? Or Australia? Or your country? What about companies? Does Mitsubishi (Japan) work top down? Does SingTech (Singapore) work bottom up? Always try to check first by talking to the other side or talking to people with experience.

As mentioned above, expectations may vary from country to country or company to company. Metcalf et al. (2006) have this to say:

- Build momentum with Indians by negotiating agreement on smaller issues.
- Build rapport with Finns and lay out the general themes and principles behind the negotiations

**Warning:** In the text above, Metcalf et al. (2006) make it clear that not all Finns, Indians, Mexicans, etc., react or think the same way. Never stereotype regarding country and culture!! Be flexible and react to the clues you learn about your counterparties as you research and as you talk to them. Check about the individuals in advance if possible. If you cannot check in advance, discover their preferred approaches at the first encounter.

**Review**

Which is better, top down or bottom up? Neither one is objectively better. However, it is generally a good idea first to explore some global issues (top down) before getting into details (bottom up). You might start by generally agreeing the overall goal, then turn to groups of issues or individual issues.

In your planning phase, long before you talk, you *must* consider top-down, global issues. If you know the global picture, you may be able to more successfully link details and integrate issues.

Your comments: \_\_\_\_\_

**Section summary**

Before the negotiations, plan starting with the big picture (top down) and again starting with the details (bottom up). Adapt flexibly to the approach the other side uses.

**Culture and negotiation**

In the section above, we learned from Salacuse (2004) and Metcalf et al. (2006) that negotiators from some countries have preferences in how they negotiate. What preferences do people in your country or region have for negotiating?

\_\_\_\_\_

\_\_\_\_\_

Interview: Ask three people in this class all of the questions below noting their home country or region. When you answer other students, avoid answers like “both”.

Which do you think is more important for a successful negotiation team?

<i>Highly skilled members (i.e. engineers)</i>	<i>Person</i>	<i>High level figure as a member (i.e. CEO)</i>
	1	
	2	
	3	

Should a negotiator represent an organization or his/her own self?

<i>Only "self" – show your quality as a negotiator</i>	<i>Person</i>	<i>Only the organization – your prestige has no importance</i>
	1 2 3	

Which is better for you?

<i>It is good to mix all the issues together to get all the opinions at once.</i>	<i>Person</i>	<i>It is much easier and less confusing to handle issues one by one.</i>
	1 2 3	

How do you prefer business negotiations to proceed – casually or quite formally?

<i>Casual is best, we can discuss in conference rooms or at dinner, no one should feel pressure about position and roles.</i>	<i>Person</i>	<i>Formal arrangements are best so we can easily know when we are "talking business" or relaxing and know the other person's role.</i>
	1 2 3	

How do you prefer business negotiations to proceed – quickly or at a slower speed?

<i>Fast is best, we should come to a conclusion quickly in order to decrease the cost negotiation and so we can get on to other business.</i>	<i>Person</i>	<i>Slower is best, we should use time to learn about the projects and opportunities.</i>
	1 2 3	

What do you think is the point of negotiation?

<i>The overall purpose is to discuss business issues.</i>	<i>Person</i>	<i>The point is to complete a suitable deal.</i>
	1	
	2	
	3	

Which idea about contracts feels best to you?

<i>A contract is a fixed document that you must follow exactly.</i>	<i>Person</i>	<i>A contract is a starting point for immediate and future business.</i>
	1	
	2	
	3	

Questions developed partly based on concepts from Trompenaars and Hampden-Turner (1998), Hofstede and Hofstede (2005)

The questions above are not easy because the answers are limited and you may not propose your own ideas. The questions and answers are designed to help you understand that people might think in ways that are very different, approaching the same problem from different directions. Knowing that approaches might be very different helps you adjust constructively instead of being surprised and upset.

### **Expectations**

Culture is deeply connected to, even defined by, people’s expectations of each other. With experience, a negotiator from one cultural background can learn the expectations of another cultural group. With that knowledge, the negotiator can adjust behaviour to come closer to the expectations of the other side.

A 2013 interview with an American business negotiator showed that Japanese businesspeople, in his experience, were more formal than Americans, and he adjusted his behaviour appropriately for them.

Interviewer: How do you usually, ehm, how do you usually address your [Japanese] negotiating counterparty? Very formally or informally?  
 Interviewee: Yes, yes, very formally. To me it just comes naturally that you need to be formal.  
 Interviewer: mhmm, what about the Americans?  
 Interviewee: They don’t give a flip, haha.

Sepstrup and Ipsen, 2013, p. 76

The negotiator in the example above expects to behave more formally with Japanese businesspeople because of his ideas about Japan and his experience there. However, Japanese businesspeople might be even more formal with each other or with other East Asians than with Americans. Japanese businesspeople generally consider Americans to be “more casual” and they prepare themselves to act accordingly toward Americans. The difference this author has seen in various encounters involving North Americans and Japanese is striking: in meetings, Japanese individuals may smoothly transition between friendly smiles and handshakes for North Americans and formal bows and strict greeting formulas appropriate to the relative age and rank of other Japanese businesspeople.

The above example from Sepstrup and Ipsen shows Americans adjusting to their ideas about Japanese people and Japanese people adjusting to their ideas about Americans. It seems that all sides in cross-cultural encounters often *mutually adjust* to the behaviours they think the others prefer.

In the end, expectations, cultural behaviours, and actions of real people in real situations are very fluid.

Consider a country or region that you know well. What kind of negotiation behaviour can you expect in that country? Would it be the same in the east and west? North and south?

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What kind of behaviour can you expect from an individual, maybe someone named Paul Tomlinson, from San Francisco, US?

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Write your very brief conclusion about culture and negotiation:

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### ***Culture and stereotyping – not a reliable approach***

...individuals and groups within cultures may be united on some dimensions (Indians on direct communication), deeply divided or split on others (Indians on attitudes), and uncommitted on others (Finns on risk-taking). It is no longer acceptable nor is it accurate or useful – if it ever was – for, say, an American negotiator to expect a Mexican to be relationship-oriented or an American compatriot to be contract-oriented. Our findings point to the inherent inaccuracy of what Osland and Bird (2000) have referred to as ‘sophisticated stereotyping’.

(Metcalfe et al. 2006)

### *Short version*

People from one country may have some similarities ... and maybe not. You can learn about general styles and cultural preferences from “Doing Business in \_\_\_\_\_” guidebooks. These guidebooks can help you to acquire practical information about gifts, general behaviours, and values.

But you cannot safely apply that general information to individuals. Do not stereotype!

What to do: learn about the individuals and their companies in addition to learning the general behaviours of the appropriate cultural groups.

### ***Culture and language***

When you are negotiating with a group from another country with a different language, you will probably interact in English. In this situation, is it a good idea for you to speak in your own native language with your negotiation team? Yes            /            No

Please explain your answer: \_\_\_\_\_

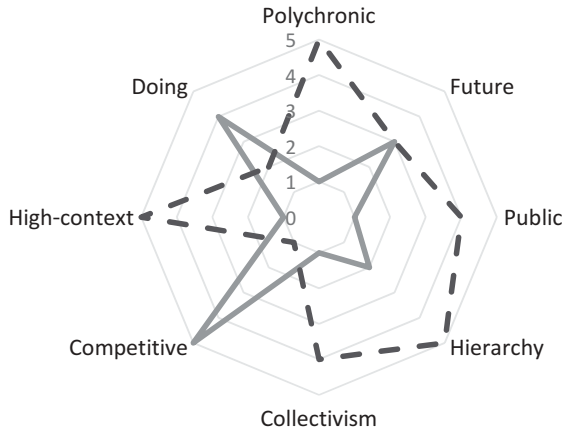
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Browaeys and Price in their (2011) textbook *Understanding Cross-Cultural Management* compare cultural approaches to common management issues. They compare five areas of management: planning, organizing, staffing, directing, and controlling to eight dimensions of culture. The dimensions are relative scales of how strongly a culture may prefer behaviours. The relative positions of a person or a group or company on the dimensions highlight areas where people may work well together or not, in part because their expectations are met or not.

The eight dimensions of culture they discuss include:

- High versus low-context;
- Doing versus being;
- Polychronic versus monochronic;
- Future versus past orientation;
- Hierarchic versus equality;
- Public versus private;
- Collectivist versus individualistic;
- Competitive versus cooperative.

Mapping one’s own expectations to those of teammates or counterparties may show how you can cooperate or where you might conflict. If conflict is on the horizon, planning and learning and adjusting may help to avoid the conflict or even create opportunities to create a new mutually agreeable approach.



**FIGURE 5.1** Profile comparing two cultures

A comparison of cultures might look like this one from Browaeyes and Price (Browaeyes and Price, 2011, p. 137).

In the radar chart in Figure 5.1, we can see large differences between ideas about time scheduling (polychronic), competitiveness, individualism, hierarchy, and public space. On the other hand, both sides may have similar ideas about future planning. With these points in mind, the sides can prepare to learn about the differences in detail looking for ways that they can complement each other or resolve conflicts. Even if only one side conducts this kind of cultural mapping and comparison, they can prepare appropriately and communicate their findings and concerns to the other parties.

In the end, negotiations across cultures may be more time consuming than comparable negotiations within the same culture. Brett and Okumura in Brett and Okumura (1998) showed that mutual gains were significantly lower when negotiating teams were from different cultural backgrounds.

See Appendix V for more insights on culture and negotiating.

### ***Corporate culture***

You must also learn about the culture and beliefs of the businesses you will interact with. Some business sectors have a corporate culture that sets them apart from other areas. For example, the world of IT is known for late nights, flexible hours, casual clothing, and working intensively as projects come to a head. On the other hand, the world of banking is better known for regular hours, working at a reasonable pace, and sticking closely to the rules of banking imposed by government or international standards.

However, inside a business sector, not all the organizations and companies may share a culture.

For example, within Japan's finance sector, Mitsui Sumitomo Bank and MUFJ have very different corporate cultures with different levels of power and



**TABLE 5.2** Corporate culture comparison

<i>Samsung</i>	<i>Lucky Gold</i>
Emphasizes individual merit and personal skills over the team. The person is number one.	Emphasizes team success over individual ability. Harmony is number one.
Empowers individuals to work fast.	Requires individuals to work within the system and company hierarchy.
Large portion of pay is based on personal performance (bonus).	Personal bonuses are not usual.
Product development and marketing are highly integrated.	Product development and marketing are more independent.

flexibility given to workers. In Korea, Samsung and Lucky Gold have very different cultures, despite being in the same industry (see Table 5.2).

### **Section summary**

Be aware of cultural preferences and behaviours in teams from other regions or countries, but never expect specific behaviour, always be flexible and sensitive towards your counterparties.

### **Weak/strong points of North American negotiators**

Understanding some common failings or strong points among a group of people might help you avoid communication errors, deadlock, and failed negotiations. In addition to gaining some insight into another group, the tables below may help describe yourself and your coworkers and counterparties within your culture. After reading about the cultures broadly described below, try listing some strong and weak points of your cultural background with appropriate comments that will help you and others work together.

Broadly, it is possible to list some common strengths and weaknesses of negotiators from a culture. Do not apply this data to all people from those places! That sort of stereotyping will most likely lead a negotiator into errors. However, it is possible to set your general expectations using this data. The next step is to compare the reality of the people you interact with to determine if they are as described below or as described in other sources. You can only cautiously apply the ideas about weaknesses and strengths once you understand the people involved. As discussed elsewhere in this textbook, know the people, know the facts!

**TABLE 5.3** Awareness: Some weak points of North American negotiators

<i>Typical Weak Points</i>	<i>Comments for North American negotiators</i>
Impatience	<ul style="list-style-type: none"><li>• Increase travel time and travel flexibility – deals outside of North America often require significantly more time for interruptions, relationship building, and back table negotiations.</li><li>• Let the other sides know you are not under time pressure and can continue the discussion remotely or on another visit.</li><li>• Propose that the finalizing meetings be held in North America to decrease the time pressure on your side.</li><li>• Train your boss; if your organization is not aware of the extensive time commitment necessary in many cases, you will have to train key staff regarding reasonable expectations.</li></ul>
Outcome over process	<ul style="list-style-type: none"><li>• Use the negotiation process to build the relationship and create new opportunities.</li><li>• Laser focus on a single driving deal or issue is not appreciated in much of the world. (It is appreciated in some places!)</li></ul>
Poor sensitivity regarding relationships	<ul style="list-style-type: none"><li>• Learn to identify key parties, including those not directly involved in the negotiation. Be aware that a government agency or senior industry partner may be standing in the wings with significant power over decisions.</li><li>• Identify patterns in context that reveal background information. This is sometimes called <i>high</i> or <i>low context</i>. Low context cultures need all details spelled out explicitly; high context cultures quickly see relationships that seem invisible to others.</li><li>• North America is usually rated middle/low context. People from this background may be uncomfortable with the bluntness of North Europeans and the indirect communications of East Asians.</li></ul>
Profit over process	<ul style="list-style-type: none"><li>• Learn to accept lower profit if it means making your supplier/partner stronger and more valuable in the long term.</li></ul>
Overuse of remote media	<ul style="list-style-type: none"><li>• Your partners may not appreciate the low cost and speed of telephone, email, video conference, and other media. Face-to-face work may be necessary, at least until the relationship has developed.</li></ul>
Short term thinking	<ul style="list-style-type: none"><li>• Trapped by budgets and quarterly reports, North American negotiators may feel they have to agree and move on.</li><li>• Train your organization to expect delayed paydays in comparison to dealing with local organizations.</li></ul>
Detail orientation in contracts	<ul style="list-style-type: none"><li>• North Americans tend to place great value on detail in negotiations and contracts. Some parts of the world may view this as wasteful and indicative of an untrustworthy partner.</li><li>• It may be necessary to let some detail go entirely or move it from the main document to addenda and follow-up documents.</li></ul>

(Continued)

**TABLE 5.3** (Cont.)

<i>Typical Weak Points</i>	<i>Comments for North American negotiators</i>
Contract is written in stone	<ul style="list-style-type: none"> <li>• Countries with strict legal systems tend to see contracts as fixed documents with little room for interpretation. Other parts of the world expect the contract to serve as a starting point for serious details and discussions.</li> <li>• It may be necessary to accept a “loose contract” as a first step to concrete work and as an invitation to work out specifics.</li> </ul>
Face	<ul style="list-style-type: none"> <li>• Most North Americans are sensitive to their own loss of face, but <i>not</i> to protecting the face or building up the face of others. North Americans should try to learn how to better manage face in negotiations.</li> </ul>

*Source:* Used with permission. Copyright © 2013 Athabasca University, Faculty of Business.

**TABLE 5.4** Awareness: Some strong points of North American negotiators

<i>Typical Strong Points</i>	<i>Comments on North Americans</i>
Agility	<ul style="list-style-type: none"> <li>• North American organizations, especially for-profit businesses, tend to have quick decision making. They can change approaches and accept new ideas speedily. This helps them adjust to changing business environments, technologies, and partners.</li> </ul>
Speed	<ul style="list-style-type: none"> <li>• North American businesses tend to deliver products quickly with short turnaround time, and often with the willingness and ability to assign additional resources.</li> </ul>
Attitude	<ul style="list-style-type: none"> <li>• A healthy can-do attitude often helps overcome social and political barriers that may seem impossibly difficult in more traditional societies.</li> </ul>
Moderately affective	<ul style="list-style-type: none"> <li>• Affective refers to the degree to which emotions are expressed. North Americans tend to be in the middle of the scale, neither extremely poker-faced nor extremely expressive. This allows them some ability to react appropriately to more or less affective counterparties.</li> <li>• Research in advance about what is appropriate and expected will benefit the negotiator.</li> </ul>
Contract writing	<ul style="list-style-type: none"> <li>• Detailed contracts seem to be a hallmark of litigious North American thinking. The potential benefit is that proper management of contingencies written in the contract can benefit both sides if explained and developed satisfactorily to both sides.</li> </ul>

*Source:* Used with permission. Copyright © 2013 Athabasca University, Faculty of Business

## Section summary

American negotiators generally are direct and result oriented. They are usually meticulous about contract contents. Adjust carefully to the style of the American individuals and groups you work with.

## Weak/strong points of Japanese negotiators

**TABLE 5.5** Awareness: Some weak points of Japanese negotiators

<i>Typical Weak Points</i>	<i>Advice for Japanese Negotiators</i>
Excessively patient	<ul style="list-style-type: none"> <li>Other parties may misunderstand patience as a failure to understand the proposals or external pressures such as time limitations. Be sure to exhibit <i>active listening</i> in a way that your counterparties can understand. It is best to show your listening skills by frequently summarizing and paraphrasing.</li> </ul>
Poor communicators	<ul style="list-style-type: none"> <li>Build up communication skills not only in speaking but also in graphical representation. Learn to collaboratively develop a joint image of a project.</li> </ul>
Develop trust slowly	<ul style="list-style-type: none"> <li>Learn to share information and give information at a similar rate and scale to information received from other parties.</li> </ul>
Slow decision making	<ul style="list-style-type: none"> <li>Accelerate internal team communication, communication with back table, and decentralize decision making.</li> <li>Learn to quickly consider and offer ideas without taking time for detailed development.</li> </ul>
Bound to Japanese business calendar	<ul style="list-style-type: none"> <li>Clarify to other parties those periods (i.e. end of the fiscal year) when you cannot work on the negotiation.</li> </ul>
Prefer detailed resolution of plans and outcomes in high detail (bottom up)	<ul style="list-style-type: none"> <li>Consider proposals at a general level without detailed analysis of all inputs and outcomes. Complex proposals can be broken into chunks that can be accepted or rejected without detailing all issues.</li> </ul>
Formal processes	<ul style="list-style-type: none"> <li>Often Japanese teams prefer formal processes such as using a junior team member as spokesperson, seating arrangements and so on. These steps may be comforting to the Japanese side, but alienating or confusing for counterparties.</li> </ul>

(Continued)

**TABLE 5.5** (Cont.)

<i>Typical Weak Points</i>	<i>Advice for Japanese Negotiators</i>
Intransigence	<ul style="list-style-type: none"> <li>• When rejecting a proposal, explain (a) why it is being rejected; (b) how it could be made acceptable; and (c) alternatives that correct the problem.</li> <li>• Negotiators from other cultures may not know when the Japanese side is embarrassed or concerned about protecting face. Explain to those counterparties how to help you save face.</li> </ul>
Major decisions not made at the table	<ul style="list-style-type: none"> <li>• Major decisions are often not made by the negotiators, but by the headquarters (back table). Work to make this process move quickly with frequent communications and well-designed recommendations to the back table. One experienced Japanese negotiator explained that he brought his boss to the negotiation table physically when the deal was very close to completion (last meeting) in order to speed the closing steps.</li> </ul>

**TABLE 5.6** Awareness: Some strong points of Japanese negotiators

<i>Typical Strong Points</i>	<i>Comments on Japanese Negotiators</i>
Patient	<ul style="list-style-type: none"> <li>• A benefit to all parties – however counterparties may not know the Japanese parties are patient because of poor use of <i>active listening skills</i> appropriate for the other language and culture.</li> </ul>
Long term thinking	<ul style="list-style-type: none"> <li>• Let the other side know early in the process about the timescale regarding agreement terms, ROI, breakeven, renegotiation, etc.</li> </ul>
Prefer detailed resolution of plans and outcomes in high detail (bottom up)	<ul style="list-style-type: none"> <li>• The final result of preference for high detail is a well designed product or process. The time required, however, may harm the negotiation process. Learn to move quickly through details.</li> </ul>
Good at understanding relationships to stakeholders	<ul style="list-style-type: none"> <li>• Let the other side know that you are considering how they interact with their shareholders. In some cases you may understand their relationships better than they do!</li> </ul>
Very closely synchronized with the back table	<ul style="list-style-type: none"> <li>• This close synchronization and understanding saves time and trouble for all parties. However, the counterparties may not understand that major decisions will not happen in the negotiation team, but at the headquarters. Be sure to make the process move quickly.</li> </ul>

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Willing to take time for site visits, research, and preparation Insightful	<ul style="list-style-type: none"> <li>• Increases the understanding of the aspects of a complex negotiation. Cost and time are not considered “wasted”.</li> <li>• Japanese teams tend to be good at whole-picture intuitive thinking. But not fast – intuition does not come in leaps, rather it comes in small steady steps.</li> </ul>
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### ***Common behaviours***

It is also wise to look for current behaviours and expectations among negotiators from a certain culture. Research done during the writing of this textbook by the authors, shows that a large percentage (77%) of experienced business negotiators in Japan rarely or never experience haggling with other Japanese negotiators. Therefore you might want to avoid haggling in order not to disturb a positive relationship.

Other findings regarding Japanese–Japanese business negotiations (data gathered in 2013 and 2014):

- Large teams are common, i.e. four or more members (87%);
- Common to develop new value during the negotiations (80%);
- Positive emotions are clearly demonstrated (82%);
- Progress is often made outside of the normal, formal work environment (62%);
- Indirect logic, rather than direct logic is normal (100%);
- Often a rush to complete before the end of the fiscal year (61%);
- Threats are rarely or never made (100%);
- Great care is given to the seating of the participants based on their relative rank (90%).

Part of your preparation before dealing with people from another culture should be to look for information similar to the above points by reading, talking to experienced people, and communicating with people from the other culture.

### ***Section summary***

Japanese negotiators may be indirect in communication, seeking to understand layers of issues before coming to specifics. They are often highly patient in negotiation and well-informed about issues. Adjust carefully to the style of the Japanese individuals and groups you work with.

## Weak/strong points of Chinese negotiators

**TABLE 5.7** Awareness: Some weak points of Chinese negotiators

<i>Typical Weak Points</i>	<i>Advice for Chinese Negotiators</i>
Prefer to conform to existing conventions	<ul style="list-style-type: none"> <li>• Show your foreign partners how other organizations conform to conventions and how this will benefit them.</li> <li>• However, as non-Chinese partners become increasingly sensitive to price, prepare to allow some flexibility regarding wage rates, other costs, and procedures.</li> </ul>
Overinvesting in amicable relationships	<ul style="list-style-type: none"> <li>• Chinese teams may sometimes rate relationship as more important than pursuing value. They must be careful not to exchange too much value for relationships – the strongest relationships are based on mutual problem solving.</li> </ul>
Disputes resolved informally	<ul style="list-style-type: none"> <li>• Complex disputes may arise or the partners, especially foreign partners, may not be able to participate in creating solutions. Therefore, Chinese organizations should include mutually agreeable language in the initial agreement to help resolve disagreements.</li> </ul>
Very dependent on a superior figure	<ul style="list-style-type: none"> <li>• Chinese teams generally feel they have to obey their superior staff – even if that person makes a snap decision.</li> <li>• To counteract this, Chinese teams should agree in advance that major decisions will not be made without consultation within the team that includes input from specialists.</li> </ul>
Paying insufficient attention to detailed and specialized contract clauses	<ul style="list-style-type: none"> <li>• The negotiating teams, especially in State Owned Enterprises, may have different staff than the executing team allowing for problems that are difficult to solve. Negotiation teams should include key staff who will execute the work, not only business and sales specialists.</li> </ul>
Time pressure in complex negotiations	<ul style="list-style-type: none"> <li>• Chinese organizations are not immune to time pressure, especially where negotiations are complex and have taken a long time. Time pressure may not be seen in a rush to complete an agreement as much as in a rush to approve it. Contracts should therefore not be hurried by the negotiation team nor by top management.</li> </ul>
One sided info sharing	<ul style="list-style-type: none"> <li>• Non-Chinese teams, especially from Europe and North America, build relationships through sharing information. The Chinese team should share its information and insights, not limit itself to gathering information only.</li> </ul>
Face saving	<ul style="list-style-type: none"> <li>• Foreign teams may not be sensitive to face saving issues such as the exact decision-making power of a negotiator or personalities behind the negotiation. Chinese teams should see these issues as problems to be explained and mutually resolved.</li> </ul>

**TABLE 5.8** Awareness: Some strong points of Chinese negotiators

<i>Typical Strong Points</i>	<i>Advice for interacting with Chinese Negotiators</i>
Establish relationships with favours/concessions	<ul style="list-style-type: none"> <li>The Chinese side may offer small concessions or favours early in the negotiation to build the relationship. Foreign partners should respond appropriately – but care must be given not to give too much or too little in response.</li> </ul>
Disputes resolved informally	<ul style="list-style-type: none"> <li>Allows low cost joint problem solving while improving the relationship. Non-Chinese may not be comfortable with this process or may not have the language and culture skills to join. They should develop the skills and staff necessary to join in the process.</li> <li>Chinese partners may be willing to commit resources in order to satisfy a need not covered explicitly in the contract in order to complete a project amicably.</li> </ul>
Easy to establish good relationships	<ul style="list-style-type: none"> <li>Chinese negotiating teams generally do not have a standoffish nature. It is not too difficult to build up professional and personal connections. Doing so is likely to ease the negotiations in general and to support the kind of informal problem solving that is usual in China.</li> </ul>
Lasting relationships	<ul style="list-style-type: none"> <li>Generally, Chinese teams will prefer to work with known companies. Thus, once a successful satisfying relationship is in place, it may create much more value in coming years.</li> </ul>
In depth review	<ul style="list-style-type: none"> <li>May work through repeated lines of questions to sound out the bottom line of the other sides. With time, teams are able to gather significant insights into the business questions of the negotiation and use this to their advantage.</li> </ul>
Tough on price	<ul style="list-style-type: none"> <li>Chinese teams have a reputation as being tough on price. However this is not always to the joint benefit of all parties. The non-Chinese sides should point out how avoiding minimal profit margins can benefit all parties in the long term.</li> </ul>

### **Section summary**

Chinese negotiators tend to value *exchanges of favours*, which is a flexible act of mutual benefit and leads to relationship-building and flexibility in negotiation. Exchanging information may not lead to good relationships. Adjust carefully to the style of the Chinese individuals and groups you work with.

Choose a partner from your culture to work with. Take some time to write down some strong and weak points that you see among negotiators in your culture. Then write out comments about the strong points and advice regarding the weak points.





**TABLE 5.9** Gender related strategies

<i>Strategy</i>	<i>How it works</i>
Start with a serious issue	<ul style="list-style-type: none"> <li>Start communication with a technical issue or a philosophical issue to establish your credibility. The founder of JBond in Tokyo, Ms. Saito, used this approach, instead of the usual small talk, when she was starting in the business world. This way she could signal to upper level managers that she was a serious part of the process.</li> </ul>
Start with a display of toughness	<ul style="list-style-type: none"> <li>Show that you are not soft and easy to deal with. Do not, however, start with a very aggressive or negative style (see the section on <i>Playing the hard card first</i> in Chapter 7).</li> </ul>
Schedule casual events in advance	<ul style="list-style-type: none"> <li>Avoid late nights and distasteful entertainments by scheduling the events and locations. If you allow others to choose the restaurant or club, you may find they have picked unpleasant places.</li> <li>Avoid extra drinking of alcohol by choosing juices or other non-alcoholic cocktails as much as possible. Make a habit of immediately asking the waiter for something you like without alcohol (good advice for male and female negotiators!).</li> </ul>
Persistence	<ul style="list-style-type: none"> <li>Some older managers may not take women, especially younger ones, seriously. A good approach is to try repeatedly to get your ideas and information out. This may mean carefully stepping into the conversation or following up after a meeting with email, written documents, or phone calls.</li> </ul>
Formal stance	<ul style="list-style-type: none"> <li>Maintain a highly professional profile using language and gesture to create an atmosphere of respect. You can dress formally (but not fancily) and use formal posture and gesture. Be careful, however, not to create a barrier of formal behaviour – it is also important to be appropriately accessible for information sharing and joint problem solving. Deputy US Trade Representative in Japan, Wendy Cutler, says, “Women must present themselves as firm yet pleasant.” Handover (2014, p. 23).</li> </ul>
Name your strategy here:	<ul style="list-style-type: none"> <li>Explain how it works here:</li> </ul>
Name your strategy here:	<ul style="list-style-type: none"> <li>Explain how it works here:</li> </ul>

## **Gender**

Women may find themselves in a different situation than men in a business negotiation. In some cultures, women are not taken seriously, and in some places they may be excluded from casual business events, for example events with alcohol.

Women interviewed in the course of developing this textbook had various strategies for participating in business negotiation. Some of these are included here:

### ***Section summary***

Gender may play itself out in a negotiation in many ways that are continuously evolving. Female and male negotiators should remain sensitive to current thinking and constantly learn about changes in current thinking on these issues.

# 6

## TALKING THE TALK

The phrases you will use as you negotiate in business will be mainly related to the functions listed below. Generally, you will do more relationship building at the beginning, much clarifying and summarizing throughout the talks, and more information sharing before and during problem solving. Accepting, agreeing, proposing, and rejecting will occur in smaller bursts at various times.

Functions include:

- Relationship building;
- Problem solving;
- Accepting, agreeing, proposing, and rejecting offers;
- Summarizing and clarifying;
- Breaking deadlock;
- Sharing information.

The first of these, *Relationship building*, is discussed in Chapter 2 and *Problem solving* is discussed in Chapter 8. Setting the agenda, offers, summarizing, clarifying, and sharing information are discussed in this chapter. Additionally, some practical items like setting the agenda, sharing information, handling threats, and rude language are discussed in the section *Practical verbal signals*.

### **Designing offers and suggesting tradeoffs**

Regarding negotiating with Chinese people and organizations, we learn from various authorities including Irl Davis of Global One that you should ...

... try to form your negotiations with the Chinese in terms of social benefits to the Chinese.

**TABLE 6.1** Proposals that seem to benefit the other side

Example of how <u>not</u> to do it...	Tomo: Hey, give me 1000 yen! Hiro: No!
A better way...	Tomo: SuperMiniPizzas cost 3 for 1000 yen, but 9 for 2000 yen today only! If you give me 1000 yen, I will run to the shop and get a lot! Hiro: OK! I love SMPs!! Here, take my money!
...even better, Tomo can try to get a little more for himself...	Tomo: SuperMiniPizzas cost 3 for 1000 yen, but 9 for 2000 yen today only! I see you are busy with your special project. If you give me 1000 yen, I will get them, but I'll keep the 9th SMP. Hiro: Sure, four instead of three is a great deal. And I can save time and get my project done before class. I am happy to give you the 9th one.

This idea may be generally true regarding China and Chinese people due to their feelings about the country and culture, sometimes called *guanxi*. However, the idea is not important only to Chinese people. Let's expand it: *always show how your offer is good for the other negotiators and their interests*. You do not always need to show what is good for a whole city or country, but with any counterparty, you must demonstrate that your proposal is good for the individuals, good for the organization they represent, and good for their interests (see Table 6.1).

Make your offers appealing – give the other side an incentive to accept your offer.

### ***Now it's your turn, work in pairs***

#### ***First, student A***

Student A: You have already agreed that Student B will buy 10,000 units from you for \$10,000 including delivery and labels. Now try to get a higher price for changing the label to include B's photograph, it will cost you five hundred dollars, so try to get more than a 5% increase in total price.

Make an offer using a sentence that shows it is good for Student B.

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*Now, student B*

Student B: You just learned you can deliver the 10,000 units efficiently for only \$1,000 and you know delivery will cost A \$1,500. Try to get a discount from Student A of at least \$1,000 on the existing \$10,000 agreement.

Make an offer using a sentence that shows it is good for Student A.


***Offer design: ask for specific things, offer less specific things in exchange***

Keep your flexibility when you make an offer. Ask the other side to do something clearly so you can be sure of what you are getting. But make your concession *less clear* so you can change a little.

**TABLE 6.2** Compare the proposals

<i>Version A</i>	<i>Version B</i>
Tomo: SuperMiniPizzas are 3 for 1,000, but 9 for 2,000 yen today only! If you give me 1,000 yen, I will run to the shop and get a lot!	Tomo: SuperMiniPizzas are 3 for 1,000, but 9 for 2,000 yen today only! If you give me 1,000 yen, I will run to the shop and bring half for you!
Hiro: OK! I love SMPs!! Here, take my money!	Hiro: OK! I love SMPs!! Here, take my money!
Which offer above is better designed for Tomo? Why?	

Compare again below.

**TABLE 6.3** Best design of proposal

<i>Version A</i>	<i>Version B</i>
XinFab: We can decrease the price by 5% if you would consider improving our delivery schedule.	XinFab: We could decrease the price a few percentage points if you let us deliver after March 10th instead of at the end of February.
OtsuTech: That sounds OK. We can let you deliver at the start of March instead of the end of February.	OtsuTech: That sounds OK.
Which offer above is better designed for XinFab? Why? Write your ideas here.	

Even better – show what is good for OtsuTech and ask them for a specific point leaving some flexibility for yourself.

XinFab: We can save you some money! We will decrease the price a few percentage points if you let us deliver after March 12th instead of at the end of February.

OtsuTech: That sounds OK.

XinFab: How about 2.5%?

### ***Core language of offers***

If you give us (*specific thing*), we will consider giving you (*not very specific thing*).

Note: This is a review of the same point of language you can find in the section on counteroffers.

### **Write a sentence or two making offers that are a little better for you, but acceptable for the other side:**

1. Offer your hotel event services at a price 5% higher than normal to the conference planning committee of IBM Japan.

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2. Offer a power conversion technology for 5% more than the usual price for such technology.

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### ***Offers and counteroffers***

“How about...” “We can do it for \$6,000 per month.” “We can’t do it for less than \$6,000 per month.” “We’d like to suggest....” “Would you be interested in....” “We propose...”

A good counteroffer includes an idea about changes or exchanges, but not a detailed exchange. Let the details develop as you learn more about what you can give and receive.

Good:

If you agree to grant us exclusive rights for the United Kingdom, then we will re-think our promotional calendar for the forthcoming year.

Bad:

We will give your product lead feature every month in our promotional calendar for the next year if you give us exclusive rights for the United Kingdom.

Adapted from *Bare Knuckles Negotiating* (Hazeldine, 2006, pp. 77–78)

### TRY TO DO IT LIKE THIS

If you give us (specific thing), we will consider giving you (less specific thing)

If your side is willing to provide the product 2% cheaper on the last day of the month, we might be able to increase our total order. Is that possible for your side?

Examples:

“If you \_\_\_\_\_, I will rethink...”

“If you \_\_\_\_\_, we will reconsider...”

“If you \_\_\_\_\_, I can look at...”

“If you \_\_\_\_\_, I can rethink...”

“If you \_\_\_\_\_, we can explore...”

In the example above, notice that the “good” version allows the offerer to give more (and receive more). The “bad” version allows no chance for expansion because something specific is being confirmed with no future opportunity for developing or sharing or retaining that specific point.

### *Package and repackage your offers*

As you make offers, bring together parts of the whole deal in different ways. This effort at packaging and repackaging will help you and your counterparties to find the best fitting deal. This process is very important in complicated integrative deals. Talking through the choices and scenarios is likely to increase trust, satisfaction, and value.

### *Section summary*

1. Help the other parties understand why your proposal is good.
2. Ask for something specific, but carefully offer something less specific, then continue negotiating.



## Accepting and rejecting offers

### *Firm acceptance*

“Sounds good!” “We agree.” “That looks like a fine idea.” “Let’s do it.” “We have no problem with that.” “That’s a green light.” “That works for us.” “I can do that.” “I’ll go for that.” “Good idea.” “I can manage that.”

### *Tentative acceptance*

“That may be alright...we will have to check with headquarters.” “That sounds like it is in the right range, but let’s talk about it more.” “That’s a starting point...” “We may be able to agree with ...” “Now we are in the ballpark.” [the price is close to the target]

### *Firm rejection*

When you hear these, you should carefully get more information but be prepared for no agreement on the issue. Notice that some of these seem tentative but are firm. Examples:

*“That’s not possible for us.”*  
*“No way.”*  
*“No can do.”*  
*“That would be a deal breaker.”*  
*“That’s a show stopper from our point of view.”*  
*“The cost is much too high.”*  
*“I don’t think so.”*  
*“That’s not quite what I was thinking.”*

Referring to causes outside the company usually shows that there can be no change or discussion about a topic. Examples:

*“The end users have made it clear they will not buy a product this color.”*  
*“The government has recently changed the regulations and all our products will have to be 10cm wider.”*

A firm rejection may show the “reserve” position of that topic. Probe a little more to be sure.

### *Poorly designed rejection*

Notice that this following rejection is much weaker because the rules are inside the company:

...we’ve got a problem with these because our [internal] rules have changed again since....

(Vuorela, 2005)

This is a weak rejection because it is almost certainly possible to suggest that the negotiators return to their company for permission to change the situation. They could even make a phone call right away. If they refuse, it might be that they were faking and do not have any rules about this. Or they might make the rejection firmer (and more clearly real).

A weak rejection might mean that they are playing for time because they need to discuss or rethink their position. If this seems to be the case, propose taking a break.

### ***Tentative rejection***

When you hear these, you should explore more ideas, get more information and hope for an agreement. Examples:

*“We would like to consider about that and discuss it more at our next meeting.”*

*“The cost is a little higher than we were expecting...”*

*“We’ll have to ask headquarters about it.”*

*“Our budget really can’t handle that.”*

*“I don’t think my boss will like it.”*

*“We will have to look into it....”*

*“I think there might be room to maneuver on that...”*

*“I will have to check with my boss...”*

*“My idea is a little different”*

These tentative rejections usually suggest that you will be able to agree with more discussion, understanding, and maybe concessions.

## **Summarizing and clarifying**

### ***Summarizing/confirming***

In his book *Bare Knuckle Negotiating* Hazeldine (2006) says “summarize frequently” so that all parties are clear about the details and what they agree and disagree about. Frequent summarizing helps all parties maintain a good relationship and clear ideas about the process. Here are some examples:

*“So that’s \$32,000 for each delivery, payable one week in advance by bank transfer, right?”*

*“If I got it right, you mean delivery on the last day of the month and payment on the first Monday of the month, right?”*

*“To review, we are looking at a decrease of 10% over the first five months in equal steps, right?”*

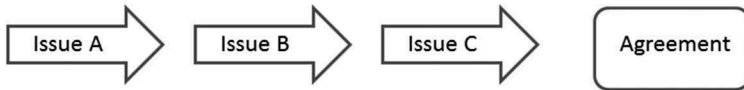
Also,

*Q...I gather that your position is that even if a UNE were ordered....*

*A. No, that’s not what I said. I said that if....*

(p. 148 of arbitration transcript, Ohio State)

Linear approach – one issue resolved after another in good order.

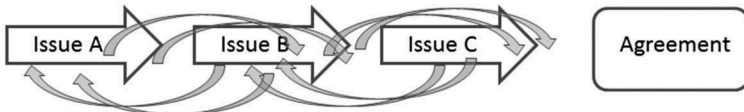


Looks nice, but the real world is not so simple.

Looping approach – issues resolved, then reviewed, perhaps changed.



Issue A, then Issue B, then back to Issue A...



In reality, looping is messy, repetitive and slow...but gets good results because ideas are confirmed, developed, reviewed, changed and re-confirmed.

FIGURE 6.1 The messy reality of negotiation progress

Summarizing, confirming, and reviewing means that a negotiation usually goes in circles and loops. It does not usually move forward on a straight line. The graphic in Figure 6.1 gives a reasonable view of the messy real world of negotiation.

### Clarification

“Do I understand that you are willing to complete the work early?” “What do you mean?” “Can you meet our technical standards this year or only next year?” “Can you explain that in a little more detail?” “I see, how would that work with the larger product?”

Q. ...being requested is technically feasible; is that correct?

A. I don't know if I understood that correctly.

Q. Oh, okay. All right. Let me....[speaker rephrases the point]

(p. 125 of arbitration transcript, Ohio State)

### Practical verbal signals

How do you know if the other side is interested in knowing more or has no more interest in agreeing? Understanding the meaning of certain words and

phrases may help. This section includes examples of words and phrases that signal feelings.

Earlier in this chapter we saw how to make offers using words and phrases that are positive sounding and flexible. In this section, we see that careful verbal signals can show that you or the other side are willing to negotiate a point.

...it is important to structure your signal so that the hint of movement on your part is conditional on the other party responding positively. ... You imply a willingness to negotiate, but only if the other party reciprocates.

...“Our normal price is X.” This could be a signal that although the normal price is X, under certain circumstances, the possibility of a different price exists. (p. 66)

*Bare Knuckle Negotiating* (Hazeldine)

“It would be incredibly difficult for us to accept an agreement of less than five years in duration.” This signals the possibility of movement. You are indicating that there is the possibility of flexibility. You are not saying that you will agree to an agreement of less than five years – you are signaling that you are prepared to discuss it. The use of the word “difficult” implies that the other party will need to provide some incentive for you to make some movement. ... You are inviting the other party to move the negotiation forward.

...encourage them to expand ... “Under what circumstances would you be able to alter the specification?”

“How could I make it easier for you to agree to the proposed fee?” (p. 72)

*Bare Knuckle Negotiating* (Hazeldine, 2006)

To summarize, the best signals invite a concession from the other side before you have made a clear offer.

### ***Playing for time***

These phrases are useful when you need a little time to think.

“I see.”

“Could you explain that to me in a little more detail?”

“Could you repeat the first part of that idea?”

“It sounds like an interesting idea, could you run through the main points for me again?”

“Let’s take a break.”

“I’d like to sleep on that.”

The most useful phrase for getting time, of course, is, “We’d like to discuss that internally – how about if we take a break?”

### ***Too expensive***

“This is above our budget.” “Our expectations about cost were very different.” “We are feeling some sticker shock.”

### ***Better than we expected***

Immediate agreement to a price usually indicates that the other side was worried about a worse price. “OK!” It may be difficult to improve the price (from your point of view) after an answer like this.

### ***We are interested in this issue***

Echo questions (see Chapter 2) usually indicate strong interest or a desire to learn more about that topic.

### ***Setting the agenda***

Negotiators must agree about the first general topic and its subtopics when they begin to talk. They must agree to an agenda. This can be done face-to-face or in the days ahead by phone, email or other method.

Follow Table 6.4 to see how agenda setting works after the greeting,

**TABLE 6.4** Agenda setting

<i>Action</i>	<i>Say</i>	<i>Comment</i>
Set the general topic	I’d like to talk about <u>GB Joint Venture</u> . We think <u>the Joint Venture</u> is a good starting point to make some positive agreements, is that alright?	Agree to what you will start with. Be flexible, if they want to start with a different issue, it is OK unless the sequence is very illogical.
Specify topics	In that case, let’s discuss the ownership structure, the decision making balance, and ....	Briefly agree what you will include in this conversation (subtopics).
State position(s)	We think the price of _____ should be about _____ because....(it is good for you)	Also quickly start the price conversation (high side if selling, low side if buying). Always give a reason with a price – a reason that sounds and feels good for them.
Link or delink	That sounds good, but we would like to talk about the 3rd one, _____, later because _____. Is that OK?	If you do not want to include a particular point, suggest handling it later.

**TABLE 6.4** (Cont.)

<i>Action</i>	<i>Say</i>	<i>Comment</i>
Discuss positions	We agree about ____, but we think ____.	Talk openly and freely. Listen closely to understand what they want. Work on details.
Summarize	So if I understand right, we all think the price should be _____ and include _____, _____, and _____.	Summarize frequently and finally agree.
Move to next topic	Let's move on to _____	
Repeat all of above		

**TABLE 6.5** Sample dialog for setting the agenda

Blue: Hello – we are glad to meet again regarding our successful JV! We have some fresh ideas about making our cooperation even better.	Greeting (Blue even sets the topic here)
Red: Yes, glad to see you all again.	Greeting
Blue: We would like to talk first about the JV – that is a set of issues we can easily manage together. Let's include restructuring ownership, decision making, and expanding the JV. Is that alright?	Topic, subtopics (Blue sets the topic/agenda)
Red: Yes, but what about the decision making, we don't see how that is a question...	Subtopics
Blue: We will explain – it's a small issue that fits well with everything. First we understand that Red will benefit from a 60/40 ownership ratio. That will save you a lot of taxes, and a little for us too. Basically – we agree! But because we don't want a simple "technology transfer" operation (we want a real JV), we would like to share decision-making power 50/50.	Subtopics (confirmed with reason)
Red: That is a little unusual. Can you explain what you are thinking?	Question for info
Blue: Sure, we...(explains)	Explanation, discussion
Red: I see. We can agree to that, though it is a little difficult and will generate some legal costs so we propose \$350,000.	Counter offer with reason
Blue: We can agree to a reasonable discount for the trouble. But we admit our initial price was high – for a reason. The reason is that ....	Back to high price and explanation

This conversation could go a different way...Red could push a little more and get their topics on the agenda first.

**Moving to a new topic**

*Let's turn to Issue 174, please. The issue here is whether...*  
(p. 120 of arbitration transcript, Ohio State)

OK. And I'm not exactly a cost expert either, *so we'll move on.*  
(p. 144 of arbitration transcript, Ohio State)

**Responding to threats**

In a negotiation you may hear a range of threats to your position. Some are acceptable and some are unacceptable (Table 6.6).

Your counterparties probably do not really want to end the negotiation, so you do not have to give in to threats in order to save the deal. If the other side really wants to end the negotiation, let them end it; remember, their BATNA must be good enough that they can walk away. If your BATNA is strong enough, you can walk away and find a new negotiation partner that does not make threats.

For more on tactics and responding to negative tactics, see Chapter 7.

**Making threats**

Don't make "unacceptable" threats at all. Even "acceptable threats" should be kept to a minimum by companies engaged in productive talks that will lead to

**TABLE 6.6** Acceptable and unacceptable threats

<i>Acceptable</i>	<i>Unacceptable</i>
"We will have to compare your offer to your competitors." "Your timing does not suit us. We might give that part of the contract to XY Corp."	"If you don't agree to this, we will go directly to your competitor and you will never survive in this business." "We'll damage your relationship with your main customer, if you don't agree to this."
<i>Comment</i>	
Acceptable threats do not suggest any significant danger to the business or personal trouble to the other party. These are acceptable and within the range of normal business.	Unacceptable threats reach beyond the immediate business talks and suggest serious damage, even personal damage, to the other party.

Note: the best way to react to a threat is to respond directly with facts. A direct response will show clearly that you can react and continue the conversation instead of giving in to the demand. Alternatively, you can respond with silence while waiting for the threat-making side to make the next move. When you respond with silence, your silence is a signal that you are not satisfied with the offer or threat.

greater future cooperation. “Acceptable threats” are not good tools for building relationships.

### ***Rude, vulgar, taboo***

These words may be used casually and can even help to relax a formal or tense atmosphere. However, generally you should avoid words that are considered rude, vulgar, and taboo. This is especially good advice for non-native speakers of English who may not be able to use the words correctly. If your counterparts use these words, try to determine whether they are intentionally being casual, or whether they are genuinely upset. If they are truly upset, look for ways to decrease the tension.

### **Deadlock and breaking deadlock**

Sometimes parties in a negotiation cannot agree. This situation is called *deadlock*. If deadlock happens to you, you have a few possible actions:

1. Leave the topic temporarily and come back to it later;
2. Take a break to rethink, relax, and reset. This can include socializing with the other parties;
3. Cut the issue out of the negotiation permanently;
4. Link the topic creatively to another topic, action, or concession;
5. Make a new try with other contacts (different people at the counterparty’s organization, different staff on the negotiation teams, removing yourself from the team, etc.) while considering personality, and emotional style of participants (Thompson, 2012);
6. Develop a backchannel contact – a person in the organization who is not directly related to the topic matter (warning, this may be seen as underhanded or tricky, especially in business);
7. Agree to an independent fact finder who can decide on a specific problem such as a price evaluation;
8. Review the deep interests of the parties;
9. Joint creative or problem solving work to refresh the relationship;
10. Agree to a set of rules that can be used impartially by all sides;
11. Consider alternative dispute resolution (ADR) methods such as mediation or arbitration. See Chapter 10 for more on the subject of ADR;
12. Review the interests of the other side to find a motivation you can strengthen to restart; for example, playing on an interest to avoid court battles by using an ultimatum or mild threat such as, “We could go to court...”;
13. Review the BATNA of the other sides for weak points to attract them back to talking;



14. Suggest that each party submit a “final best offer” to be evaluated by an independent party. Final Offer Arbitration, for example, requires a judge to pick the most reasonable offer without bending or compromising. In this system, unreasonable offers will lose in favour of more reasonable ones. This approach means that the parties will submit reasonable offers in order to not block themselves from winning.

(Bazerman and Kahneman, 2016)

Of course, if the deadlock cannot be broken and the issue cannot be abandoned, you or the other side may have to use your BATNA. Wade (2006) gives a slightly different view of the above options in the context of family disputes.

### ***What to say when deadlock occurs***

- I think we are becoming stuck on this topic, let’s move on to ....
- Seems like we are stuck, how about a break before we continue with another issue?
- It seems like we can’t agree about this, so let’s talk about another topic and come back to this later. Is that OK?
- After two hours we still disagree, how about removing this from the negotiations and asking an independent party to decide?
- We clearly disagree about who made the mistake, let’s find a judge who can decide clearly about it. In the meantime, let’s continue talking about...
- We frankly cannot pay more than \$12,500 for the equipment. However, we could pay a little more for the installation if you allow us to select the work team...what do you think?
- Is it possible to do that work under some limited or special conditions?

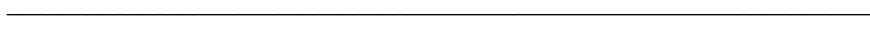
### ***Another approach – consider the points in the problem issue that you can understand***

Fisher and Shapiro (2005) suggest that a negotiator take a neutral position temporarily while communicating with the other parties about a troublesome issue. If there are points in the issue that you can understand, it may help the other side to appreciate your points *after* you have demonstrated that you understand their points.

### ***Deadlock 1***

Think about the following deadlock situation and suggest how the negotiators could manage. Write out the sentences they could use.

Company A wants to sell Company B’s motorcycle tyres, but not their accessories. Company B strongly wants A to sell both tyres and accessories. After 20 minutes, they are deadlocked.



## Deadlock 2

Recall the Case of the Incompetent Translator in Chapter 1. What could the project manager have done to bring the translator into a negotiation? Would it be worth the time and cost?

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### Section summary

Creative ideas and links to other issues are best for breaking deadlocks, but it is not always possible. Identifying unresolvable deal breaking deadlock issues in advance will save time and cost.

## Shutdown moves

How can you bring a negotiation to an end at the right time?

In his 2010 book *Negotiauctions*, G. Subramanian of Harvard Business School describes shutdown moves as a way to prevent the other side(s) from finding better deals with competitors. Subramanian also points out that timing is important – shutdown moves must appear when the other side is close to accepting and delay would result in their reconsideration of alternatives. Wade (2006) provides a list that includes deadlock breaking moves as well those designed to finish a negotiation. Selected shutdown moves from Subramanian and Wade are in the table below.

**TABLE 6.7** Shutdown moves

<i>Move</i>	<i>Language example</i>	<i>Comment</i>
A spoonful of sugar	If we sign off now, I will make sure that your logo is at the entrance all week – free.	These shutdown moves can create value and convenience for all parties. It is possible to make these too restrictive or even negative (spoonful of vinegar). Design these moves carefully.
Appealing release terms	If we agree now, we will release you from the agreement if oil prices rise 5% more than expected this year.	
Acceptable penalty clauses	You can break the agreement by paying a 5% fee any time in the first 4 weeks.	
A spoonful of vinegar	If we don't agree today, the prices will go up by 10%.	

(Continued)

TABLE 6.7 (Cont.)

<i>Move</i>	<i>Language example</i>	<i>Comment</i>
Direct appeal	It looks like we have covered all the issues well, can you agree with the deal as it is?	If the parties are basically satisfied, this move can bring a close to the deal with no more time lost.
Compare benefits	Let's review the proposal in detail. (List the benefits to all parties in detail, possibly in spreadsheet format.)	This move appeals to negotiators who appreciate rights and fairness. If a party has a win-lose mindset, emphasize the "better" value they are getting.
Extra strong moral position	If you agree now, we can deliver these medicines immediately, and help those people!	This kind of shutdown move is unreasonable. Do not rush into an agreement. Avoid using this kind of shutdown move.
Split the difference	We have come so far, how about we meet in the middle?	This move catches tired negotiators who may have lost track of where the "middle" really is. Instead, share resources or repack-age until both sides have satisfying benefits.
Defer an issue	Looks like we agree about everything else, so let's cut out the problem issue and worry about it next year.	If the agreement is workable without that problem issue, this may be useful for the parties.
Time restrictions	Our offer is only open until the stock market starts on Monday morning – we must have an agreement by then.	These are ultimatums. Do not accept, just coolly reevaluate. See the section on tactics. Avoid using these because of the risk that the other party will walk away agreeing that progress is impossible.
Ultimatum	Agree now or we will withdraw the offer!	

You may have to attempt these moves more than once – Subramanian (2010) tells us that only 20% of attempts are immediately successful.

### **Section summary**

Time your shutdown moves carefully to complete phases of a negotiation or the whole thing. Polite persistence may be necessary.

## Language choice

### *Choice of language in negotiation*

This textbook is in English and provides practical advice about choice of words and phrases in English. But much of the advice will be useful in situations that use only a little English or no English at all. In business negotiations with more than one culture, the participants may pick a common language that some or all know well, and they may mix one or more other languages with the common one.

Negotiators can choose the language to match the agenda. An interview quote from cross-functional team representatives from MNEs in the IT industry (Chen, 2008) shows the process.

*Huang, a Chinese native language speaker in Vancouver, B.C. Canada, uses English as a foreign ... and as a corporate language within her firm. She describes the dilemma of using languages while managing tasks and social-relations.*

International companies rely on multilingual speakers to find the best solution for both parties... language is not a big problem when we only talk about logistic issues... but when a work problem becomes personal, using a foreign language to deal with relational problem becomes a major issue.

Two points are of interest: First, multilingual negotiators choose between a native and a foreign language to negotiate with the same native language speakers. Second, the choice of language impacts the message receiver's own perception. The choice of language can be a tool for maintaining or removing old divisions or for creating new ones during collective actions.

### *Use of multiple languages in negotiation*

#### *Negotiating with those who share the same native languages*

Multilingual negotiators from the same native language background should consider the effects of language choices when prioritizing task-based negotiation or relational-orientation negotiation. When negotiators are grounded in a common environment (e.g. nation, culture, institution), their language options can include local and corporate languages (or native and foreign languages).

The examples below show how this happens in day to day work.

*Kao, a Chinese native language speaker, uses her corporate language, English, as a foreign common language in a firm based in Taipei, Taiwan where the local languages include Mandarin and Taiwanese. She describes how negotiators use language socially while coordinating tasks. Her statement*

shows how negotiators use their native language and how they react to a foreign LF.

*I use Chinglish, it is a mixture of Chinese and English ... I like to add 'ah, la, oh' these kind of sound in English ... to be more expressive. When my Taiwanese counterparties speak in English only, it occasionally makes me feel they have some kind of attitude, snobbish or demanding ... maybe distant.*

Ma, a Chinese native language speaker in Vancouver, Canada, uses a foreign language – English. He describes how common native language speakers use a foreign language to conceal cognitive implications and present appropriate social actions in negotiation. He describes how language choice is a trade-off.

*It's hard to use a foreign language to show feelings with my fellows... no emotion exchange, it's easier to make progress when I make a point about company policy, but things may become personal and damage relationships... for a long-term work project, bad relationship makes our team lose... whole project would be jeopardized.*

Switching between different languages to create a multilingual context can be a negotiation strategy. Negotiators choose languages to develop aspects of the negotiation such as relationships and joint understanding.

### *Negotiations when there is no shared native language*

Negotiators from various countries may or may not share a common native language. Yet, in a single-language environment, a foreign common language requires greater demands than using a native language. The sole use of a foreign language causes difficulties in sharing information and impacts relationship processes through adding to complexity (Salk and Brannen, 2000).

Liang, a Chinese native language speaker in Vancouver, Canada, uses a foreign language, English. He describes how he uses it to negotiate with Canadians and how the choice of a foreign language can influence value-claiming.

*My Canadian counterparties know that I am Chinese and English is not my mother tongue. The good thing of negotiating in English is that English native language speakers will be more tolerant of my directness. Sometimes I can be rude and strongly express my opinion. They could simply interpret my style or attitude is more like a cultural barrier. So, they are more likely to focus on how to get the work done.*

Multiple language choices give negotiators strategic alternatives. Negotiators may select and switch and mix languages to transfer information, build relationships, or show their intentions.

Lin (in Xiamen, China) explains how multilingual negotiators utilize a foreign common language even when they communicate with their counterparties who speak the same native language to prioritize task-oriented issues.

*In negotiation, we manage different conflicts, such as issues relating to tasks or issues jeopardizing relationship. English is like a tool to focus on work, such as a firm's policies, task requirements, subject titles as well as a way to detach my personal feelings to be assertive.*

The quote suggests that multilingual actors are sensitive to the choice of language in a negotiation. When negotiators choose a foreign language over their common native language to express their feelings, they may experience difficulty.

In the example below a native English and a native Chinese speaker switch between the languages. They use Chinese and English to build up the relationship, but mainly English for the technical issues, except for one offer.

Both Go-si and Grant work in different firms. Go-si is Chinese, based in Beijing, China and Grant is Canadian, based in Shenzhen, China. They both switch between native and foreign languages – Chinese and English.

GO-SI: Grant! I need to discuss something with you. Are you available now?

GRANT: She me shi?

(TRANSLATION: What to discuss?)

GO-SI: You know that we need to quickly despatch our products to your sides, however, due to the budget issues, we would like to change to courier delivery instead of using flight cargo. Is it okay? I will despatch the products 2 days earlier but it will be 4 days late if that is okay with your side?

GRANT: hmm.... let me check.... I am not sure about it. We have other deadlines to catch here. What's the problem?

GO-SI: We had some problems on one of our operational lines. So, we need to re-do some work. However, if we can change the delivery method, we may be able to reduce extra financial costs. Anything you can suggest?

GRANT: yi ban huo chen yi ban kung yun? what do you think?

(TRANSLATION: half delivery by courier and half by flight cargo?)

GO-SI: Great! Xie le :D

(TRANSLATION: Thanks for that!)

GRANT: bu ke qi

(TRANSLATION: You are welcome.)

The Canadian (Grant) uses his counterparty's native language (Chinese) to benefit his counterparty. This approach indicates a clear intention to deepen social relations with the other business person. Even though the Chinese native language speaker (Go-si) prefers the foreign language to actually process the task, he responds to Grant by switching to Chinese. In this way Go-si recognizes his counterparty's attempt to deepen their social bond. A negotiator can use his/her counterparty's native language in order to socially connect and develop a closer bond.

### **Section summary**

When negotiation participants are from different language backgrounds, or even the same language background but operating in a foreign environment, choice of different language will have important impact.

### **Use of language in communication**

When negotiators use certain words and expressions, the choices can create feelings for the message receiver, and trigger certain functions as psycho-linguistic reactions.

### **Use of language between the same native language speakers**

For negotiators who speak the same native language, the choice of words may require greater attention and sensitivity to the communication context. A common native language between communicators functions as an indicator of cultural norms and social values due to the context that language carries. The collaborative development of wording and selection of common phrasing and style in the communication likely accelerates the information-sharing. Table 6.5 lists some examples where the use of a word causes a certain semantic interpretation between the sender and the receiver.

**TABLE 6.8** Words and meaning

<i>Message sender's expression</i>	<i>Perception from the decoded messages</i>	<i>Function</i>
<i>I want to...</i>	Imply self-interests	Positioning
<i>I need to...</i>	Request for help	Priority clarification
<i>Why can't I have it?</i>	Argumentative question	Competitiveness
<i>How can I have it?</i>	Solution-request	Suggestion
<i>What should we...</i>	Joint problem identification	Information exchanges
<i>How can we...</i>	Joint input request	Resource exchanges

In addition, misinterpretation is a taboo between the common native language speakers and misinterpretation may be perceived as a form of manipulation. Hence, the circumstance of misinterpretation between native language communicators might not easily be tolerated or forgiven. When misinterpretation happens, it is likely to jeopardize the relationship-building of same language speakers. Semantic misinterpretation may lead to hostility or even conflict with impact on the longer-term relationship. Continuous misinterpretations may cause the relationship to suffer through loss of trust.

### ***Use of language between native and non-native language speakers***

Between a native language speaker and a non-native language speaker, language interpretation in a foreign lingua franca may result in a failure of information delivery due to a lack of understanding. Native language speakers may simply perceive the intent mistakenly, or the message can be lost in translation due to cultural norms. The social mannerisms and cultural expressions can be embedded in the use of language and accordingly result in behavioural misinterpretation or information miscommunication. *See the following examples:*

When a Chinese language speaker communicates with a native English language speaker in English foreign lingua franca, the aspect of language competence likely affects the interpretation.

#### **Scenario A: Insensitive or Rude?**

ENGLISH-SPEAKER: *Would you like some tea?*

CHINESE-SPEAKER: *I want tea.* (A direct translation from Chinese to English.)

ENGLISH-SPEAKER: *You are so rude!* (The English speaker feels upset due to the Chinese speaker's phrasing. It appears to be a demand instead of a polite request.)

CHINESE-SPEAKER: *Why rude? I answer your question.* (Confused by the English-speaker's accusation.)

ENGLISH-SPEAKER: *Do you mean, "I would like to have a cup of tea"?*

CHINESE-SPEAKER: *Yes, tea.*

#### **Scenario B: Yes or No?**

ENGLISH-SPEAKER: *You don't think that taking an advantage of others is good for relationship-building, do you?*

CHINESE-SPEAKER: *Yes.* (Yes means, I agree with your whole substance)

ENGLISH-SPEAKER: *What? You tend to take an advantage of others when you intend to develop a relationship?*

CHINESE-SPEAKER: *No.*

ENGLISH-SPEAKER: *So why you say YES?*

CHINESE-SPEAKER: *YES means that I agree with what you say.*



### Scenario C: Friend or Stranger?

ENGLISH-SPEAKER: *Could you please kindly make me a cup of tea?*

CHINESE-SPEAKER: *No.*

ENGLISH-SPEAKER: *Why can't you?*

CHINESE-SPEAKER: *I thought you asked me a question and I answered.*

ENGLISH-SPEAKER: *Actually, it's a request framed politely.*

CHINESE-SPEAKER: *Oh, okay. Will do, but why don't you just tell me what you need?*

ENGLISH-SPEAKER: *I can't "TELL" you, but I can "ASK" you if it's me who asks for a favour.*

CHINESE-SPEAKER: *We are friends, you just TELL me and you don't ASK. If you ASK this kind of small thing, you are treating me as if I were a stranger.*

### Scenario D: Romance or Conflict?

ENGLISH-SPEAKER: *Thank you for your help, love.*

INDONESIAN-SPEAKER: *What? Are you in love with me?*

ENGLISH-SPEAKER: *Oh, no no no.... It's an expression. It doesn't mean THAT kind of "love".*

INDONESIAN-SPEAKER: *You made me feel very uncomfortable. Don't call me, love. You confuse me.*

Language competence in a foreign lingua franca comprises social value and cultural norms as well as proficiency. Due to a lack of language competence, encounters with miscommunication and misinterpretation in a foreign lingua franca may more commonly arise between native and non-native language speakers and between different native language speakers (e.g. Thai and Japanese). Negotiators who use their native language as a lingua franca in communication can be in an advantageous position in terms of fluency. In a cross-cultural or cross-national negotiation, negotiators who use their native language as a lingua franca should be more aware of the other parties' social and cultural perspectives. The convenience of using a native language for a lingua franca can, however, lead to cultural expressions indicative of a specific region (i.e., colloquialism, dialects, idioms; etc.). Such cultural expressions can confuse people other than the local.

Here are some more examples. The literal translation of "negotiation" in Chinese is "coordinate the differences" or "discuss and decide". The literal translation of the Chinese word to English appears collaborative for task differences and approachable for relationships. The use of the word "negotiation" however has a hostile sense in Chinese, which insinuates the message "I win, you lose". If an English-speaking negotiator initiates the negotiation by using the words, "negotiate a deal", to a Chinese negotiator, the message may be misunderstood and interpreted as an aggressive gesture. The perception of hostility may arise unintentionally before the actual negotiation begins. Hence, the intention embedded in the words may not be fully delivered,

which results in further misunderstanding, which may jeopardize the negotiation itself.

An awareness of cultural and social perspectives toward a non-native language speaker helps us understand how to avoid potential conflict. Negotiators who lack cultural awareness may be more likely to encounter frustration in the process of communication. The emotional frustration tends to distract negotiators from being objective.

### ***Use of a foreign lingua franca between the non-native language speakers or in multilingual nations***

Negotiators who use a foreign lingua franca in communication (e.g. English used between a Chinese language user and a Korean language user) may be less sensitive toward wording. The behaviour and attitude of negotiators can affect comprehension more than the wording in a foreign lingua franca. When the cultural distance (West and Graham, 2004) and linguistic distance (Hofstede, 1980) between a foreign lingua franca and a native language is at a high level, translation can become literal and implications and nuances may be lost. The communication may take more time merely to render something useless, or at best, cost time for clarification of a point.

In addition, a foreign lingua franca can impact the negotiation when the language distance between two national languages is not equally distant to the foreign lingua franca. For example, take the choice of English as the lingua franca between Japanese and German negotiators. Japanese language speakers who use English may encounter bigger challenges than German language speakers who use English because of deep differences in their native languages (Brannen and Salk, 2000).

A common background or shared experience may make non-native language speakers more aware of the use of a foreign lingua franca. In those cases, the level of competence in that foreign lingua franca will be crucial. When a foreign lingua franca is required in a multilingual environment, it can be an easy option if the shared foreign language is the same among the participants. The choice of words will nevertheless need additional attention among the non-native language speakers who are equipped with a high level of language competence. *See the following examples of using a common lingua franca in two different situations:*

- From the perspective of **multinational connections**:
- English is used typically by negotiators who are educated in English language institutes and nations. French is a frequent choice by negotiators from the countries once colonized by France; e.g. Morocco, Laos, some regions of Cambodia, and much of West Africa. Kiswahili is used in several countries of east central Africa. A shared lingua franca may be the easiest option to bridge communication in regions where a language is widely taught as a second or third language in addition to the home language(s).
- From the perspective of **multilingual environments**:

English may be used by negotiators who are based in the same countries when encountering different ethnicities or as one of multiple national-official languages. Examples include using English in Singapore as well as in Malaysia; English in Belgium as an alternative to the three official national languages of Flemish, German, and French. English is at a similar linguistic distance to Chinese, Malay, or Tamil (all are distant to English) whereas English is similarly close to Flemish, French, and German. In these examples, the negotiators choosing English all experience a similar level of difficulty as their counterparties.

### **Use of a foreign lingua franca among the same native language speakers**

Negotiators who share the same native language and are from a high-context culture highly value relational connections. Those who intentionally use a foreign lingua franca and avoid using their own native language in negotiations may create distance in terms of the shared social values or cultural norms by putting focus on business. When negotiators avoid using the common native language, the relational connection may be intentionally minimized, for example to avoid closeness or reject any similarity of origin.

The same native language can be associated with

- a national language; e.g. Chinese Mandarin language speakers between China and Taiwan; Turkish language speakers between Cypriot Turkish territory and Turkey; etc.
- a local dialect or a regional language; e.g. Cantonese language speakers in Hong Kong, Macau and Canton province in China or other overseas Cantonese speakers. Hokkien language speakers in Taiwan, Singapore, Malaysia, the Philippines, Indonesia, Hokkien province in China. Tamil language speakers in India, Malaysia, Sri Lanka; etc.

There are some exceptions when choosing a foreign lingua franca over a common native language. For example, Arabic language speakers among the Arab countries may adopt a foreign lingua franca such as French due their high skill level resulting from colonization. Chinese Mandarin language speakers who originate from former British colonies, such as Singapore, Malaysia, and Hong Kong, may prefer English for official negotiation due to governmental influence to unite a multilingual environment.

### **Visual communication**

It is not necessary to communicate by speaking and writing only. A business negotiation can be an opportunity for very broad communication, especially

during problem solving discussions. Using visual communication can support the ability of the parties to communicate and create solutions.

Q. What is visual communication?

A. Using pictures, diagrams, sketches, models, skits, charts, etc., to share ideas and solve problems. These things can be casual or professional, prepared in advance, or created on the spot. They can be made by one person, or all parties. Innovations in information communication technology, such as cloud IT, can offer improved information exchange and storage. The sharing of materials this way is a gesture that may start a trusting interaction process in addition to allowing collaboration which in turn can lead to more trust.

Q. Why should we bother with visual communication? After all, speaking works well and drawing bad pictures does not seem very professional.

A. Visual communication improves on spoken communication in three aspects of negotiation according to Swaab et al. (2002):

- Understanding;
- Relationship;
- Satisfaction.

Further, joint creation of images can lead to joint problem solving which also supports understanding, relationship, and satisfaction.

Q. Which do you think is better for a face-to-face negotiation, whiteboard or computer and projector? Why?

A. Your answer: \_\_\_\_\_  
\_\_\_\_\_

*Presentations:* Presentations are for delivering information in one direction. Negotiations however combine input from all parties. Therefore, a presentation is usually not appropriate for a negotiation. If you feel an introductory presentation is useful, keep it short and simple. The slides should be uncluttered, but not black and white. Use animations, images, diagrams, maps, video, graphs, and tables more than words. Warning: animations must be simple, not complicated, not distracting and not overly cute. In any case, bring the presentation on paper in case of technical problems.

*Handouts:* Handouts are much more suitable for a business negotiation than presentations. Handouts can be reviewed in any order at any time by all parties. All parties can contribute their ideas to the handout simply by writing on it. Each handout can focus on a single point. More information can be delivered and developed by use of handouts than through presentations.

### ***How to make useful drawings and diagrams on paper or whiteboard***

Dan Roam in his book *The Back of the Napkin* suggests that you consider five dimensions when you want to visually communicate. These dimensions are:

- Simple vs Elaborate
- Quality vs Quantity
- Vision vs Execution
- Individual vs Compare
- Change vs As-is

Roam (2010)

Understanding these five issues will help you quickly decide what kind of image to draw and what the focus of your communication should be and how to draw it.

Use a Simple picture to communicate only about that object, but draw an Elaborate picture to show the object in its context (use, origin, users, transportation, etc.).

Draw a Quality picture to discuss a detailed characteristic of an object. Quantity pictures include graphs, charts, and numbers.

If you want to communicate about the final outcomes of a new business activity, draw a Vision picture that shows things as they will be. A Vision picture might show the customers using the product that solves their problems. If your idea is about the processes necessary to create a new business activity, draw an Execution picture showing the steps. An Execution picture might be a process diagram or flow chart with lines and arrows.

Individual pictures show one object, but in order to compare you should draw more than just that object. With several drawings, you can point out individual differences, for example the meaning of quality in apples (size, shape, bites, bruises, etc.)

Your drawing might show Change or the As-is situation. As-is pictures show the object or idea as it works (or does not work) now. The Change picture shows how the system would be in the future.

Summary: choose the picture or short series of pictures that will be most useful for you. Make simple drawings because they are quick and effective. You will improve your communication ability with practice, but the goal is not to draw nice pictures, just to communicate!

As an answer to the earlier question whether a whiteboard or computer is better suited for a situation, consider Table 6.9.

With only one plus point on the computer side, the advantages are heavily in favour of doing the work by hand. Cloud-sharing and collaborative technologies however could make computers and related equipment more accessible to all participants in the negotiation.

**TABLE 6.9** Comparing visual media

<i>Whiteboard</i>	<i>Computer, tablet, etc.</i>
Many can access it simultaneously	Only one person at a time
Easily used and modified	May not be easy to draw complex ideas
Skills widely available	Slow typing or weak graphics skills will harm the process
Promotes co-creation	Blocks joint use
Builds relationship	Tends toward struggles for control of machine
Not hard to save (photograph and process later)	Easy to save and distribute

Advice to co-create with counterparties:

- Share the paper and pens;
- Use a whiteboard;
- Stick figures and non-beautiful drawings are OK;
- Bring a few coloured pencils/markers (too many colours will lead to confusion);
- Keep it Simple Short (KISS);
- Practise a little to improve your skills, but don't worry too much!

## **Conclusion**

Use whiteboards, prepared graphics and diagrams, photos, video, animations, sticky notes, notepaper, even paper napkins, or collaborative electronic tools. Visual communication supports problem solving, idea sharing, and relationship building.

## **Remote and electronic negotiations**

But not all negotiations are face to face. Email and teleconferencing may make it impossible to share the use of a whiteboard or paper. In that case, it is possible to encourage joint problem solving by sharing documents through collaboration software. See below in this chapter for more information on remote negotiations.

## **Section summary**

Use visualizations of all sorts to facilitate communication of ideas in negotiation – these support the verbal negotiation and are generally accepted as serious.

### Remote electronic negotiations

Increasingly the business world negotiates partly or entirely by remote media: video, phone, email. These tools are convenient and accessible – a smartphone might be enough for all of these. The advantages of remote electronic talks include convenience and speed. The disadvantages include having less context around the talk: facial expressions, voice tone, gestures, and so on. These clues are minimized or cut out completely in remote negotiations, and it becomes easier to miscommunicate.

We can describe media on a scale between Rich (lots of context and information) to Lean (little information other than the core message), as in Figure 6.2 below.

Lean media is helpful to build information certainty and avoid vagueness – use lean media for simple messages and content. Using email features wisely can be efficient, by attaching self-explanatory files such as figures, images and illustration. Use poor media more with established relationships where meanings and intent are already established and clear.

Use rich media for complex discussions, emotional content, and new relationships. Figure 6.3 suggests which form of communication to choose depending on the relationship and the complexity of the issues.

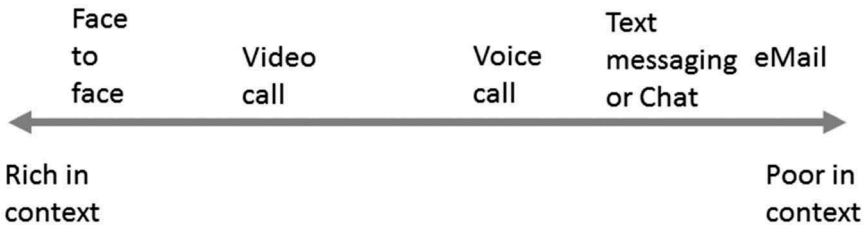


FIGURE 6.2 Rich and poor context media

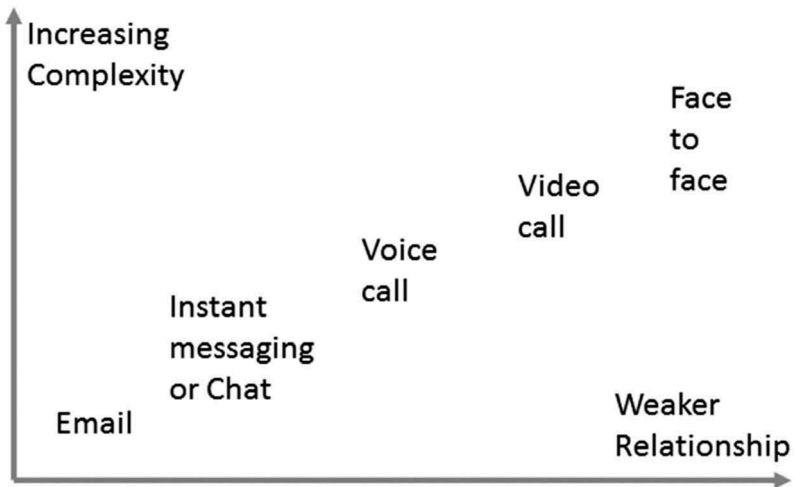


FIGURE 6.3 Which media fit best

When we negotiate, we often use multiple communication channels to exchange information, such as phone, email, face to face, video and so on. How can we pick the best channel for a specific moment? Understanding types of information helps negotiators select the most appropriate communication channel.

There are two information processes to consider: information conveyance and information convergence (Dennis and Valacich, 1999; Dennis, Fuller and Valacich, 2008).

### ***Information conveyance process***

Information conveyance focuses on distributing divergent and uncertain information including objective data and analytical information. The data and information help develop new, diverse, and concrete ideas jointly. Information conveyance occurs to clarify general routines and standard circumstances and gain common broad understandings.

### ***Information convergence process***

Information convergence focuses on gaining common results such as defining problems and resolving understanding. The convergence process involves subjective ideas and individual thoughts to provide familiar, distilled, and deep thoughts in order to comprehend unique situations and help the group react to unexpected situations.

In addition, communication channels include various capabilities for information conveyance and information convergence. Channel capabilities include features such as:

- Transmission clarity which enhances the clues for immediate comprehension. E.g., physical presence, visual enhancement, verbal delivery, written approaches, graphical support, dialectical interaction, and analytical tools.
- Reusability which allows users to re-process and repeat the information.
- Procedure rehearsability which makes it possible to store information and resume the information development before the actual delivery.
- Symbol variety which lets users offer various types of verbal, non-verbal and para-verbal communication.
- Multi-tasking which allows users to simultaneously communicate and evaluate.
- Access control which allows enabling and disabling private and public access.
- Relational quality which develops relational connections and nurtures the depth of relationships.

Q. How can you optimize the use of information communication technologies in negotiation when the interactions cannot be held face-to-face?

A. Your answer: \_\_\_\_\_  
\_\_\_\_\_



### ***Email advantages***

According to the graphics above, email and text messaging are the media that carry the least context information. Email, unlike text messaging, does not even tell the users if a person is available or not. With so little context, there are some advantages to be exploited:

- No instant response needed (asynchronous)  
Email does not require an immediate response, it can wait for minutes or days at your convenience. After opening an email, you can take time to gather information and consider alternatives before answering.
- Language skills  
If the negotiating parties do not share the same native language, email allows for slow responses with time to create and revise in the foreign language. This slow process is much more comfortable (and more grammatically accurate) than the immediate give and take of live communication. Language learners benefit from email's low-pressure format.
- Low barrier  
Some people feel more comfortable proposing an idea when it is not face to face or not using live media. Email provides the feeling of insulation from a poorly promoted proposal (author research, Chen).  
Additionally, low power individuals may communicate more and more successfully using email or messaging (Thompson, 2012).
- Manage emotions  
Email does not necessarily show emotions, especially if you take time creating and revising it. You can manage your display of emotions to make the recipient think you are happy, angry, satisfied, etc. On the other hand, it is easy for recipients to misread email because they project their own emotions or worries onto the email. Therefore, extra care in writing, careful use of emoticons, follow up calls, and visits is wise.

### ***Define a clear purpose for your email***

If your email's purpose remains uncertain, the message may be misunderstood or even remain unread. Therefore, the person responsible for writing the email needs to explicitly and clearly address the key points during the introduction to motivate the recipient(s) to carry on reading and get the point. However, if the introduction is overly long or unclear, the reader may lose focus or skip passages of text and miss or overlook one or more key points. Therefore an informative subject line and brief introduction are the best combination.

Don't waste your time writing something that people won't read. Make it easy for your recipient(s) to know what you require and expect from them. A clear and concise indication respectfully phrased can help an email recipient understand the key points.

## ***Types of email***

Five kinds of email can be generalized. You should clarify the type as early in the email as possible to help the reader(s) quickly identify the nature of the text and whether it is of interest. The five types of email are:

- Information sharing: conveying information without the need for a response. Such as, sales advertisement, reminders; etc., but avoid lengthy, excessive texts. Be explicit – help the reader understand who, what, where, when, etc. Identify the topic clearly and share the information concisely.
- Inquiries: requesting advice or providing answers to questions. Responding to inquiries helps the sender gather information which may be advantageous to all parties. Number the questions to encourage a thorough response. Do not ask many questions in one email. Limit or avoid open ended and vague questions.
- Required actions: taking an action towards an issue is required to move an agenda forward. Such as: forwarding an email, linking to a webpage, receiving/checking attached files, etc.
- Open ended discussion: Having a dialogue to keep the communication active, for the purpose of a mutual benefit or a future interaction. Such as: brainstorming, project development, etc.
- Advice: if a sender requests advice on a problem, replying with a vague or an irrelevant comment (e.g. complaints) is likely to delay matters. It is important to offer concise suggestions. Generally, it is a good practice to include links to supporting sources. Because advising and problem solving is a complex process, it is good to propose a phone call or face to face conversation.

## ***Structure of successful email***

*Subject line* – never send an email without an informative subject line. Six or fewer words is best. The topic and your general feeling or opinion should be clear.

*Greeting* – always start with the name(s) of the intended recipient(s). For example: “Dear Bob”, or “Bob”, or for a group, “Bob, Tom, and Susan”. You can also start “Dear Team”, “Dear All”, etc.

*Lead to the next communication* – In successful business, one activity leads to another. Finish up with phrases like “...please send me your response...” “...let me know your opinion about...” “...I will call tomorrow to talk about the details...” “...please review the attached document and send it...” “...I’ll be in your district on Thursday, let’s discuss this further over a coffee...”. Assertively and politely stating the date and/or time when a response needed is most likely to result in a timely reply.

*Closing* – close with a polite ending. “Best regards, Tom” is a good general purpose ending, or “Thank you, Tom”. Avoid “Sincerely, Tom” or overly warm closings. “Thanks” is acceptable for an internal email in an established business relationship. After your name, a business email should include a few lines (about four) with your organization and contact information.

**TABLE 6.10** Business email dos and don'ts

<i>Content</i>	<i>Do</i>	<i>Don't</i>
Abbreviations	Use only business abbreviations known to the email users. Explain new abbreviations as necessary.	Do not use casual abbreviations like “CUL8er” (see you later).
Animation		Do not use distracting animations.
Attachments	Yes if format is important. Yes if the communication is long. Yes if you need to send graphics/ images, etc.	Do not send attachments that are not directly related to the topic. Do not include company logos as attachments – put them in the body of the email if required only.
Clipart	Avoid.	
Complex issues	Make a phone call or a face to face visit.	Do not use email for complex issues.
Emoticons	Use sparingly. Use emoticons only to show an upbeat feeling, a concern, or other very clear simple feeling. These are generally OK in an established business relationship: ☺ :- ) :) ☹ :- ( :(	No animated emoticons. No unusual emoticons. No emoticons for complicated nuanced feelings. Be careful, these are common in East Asia but are not yet common elsewhere in business: > < (^o^)
Social-cultural symbols	Western: in the social encounter, tend to use the letter x to conclude informal texts. The letter x stands in for body language (kisses) and suggests closeness.	In some countries, certain alphabet letters may insinuate a quite different gesture than in others. For example, the letter x indicates a censored dirty word in Taiwan.
Grammar	Keep it simple.	Do not show off your grammar skills.
Humour Irony	Avoid. Do not use.	
Length	Good email is short, 5–20 lines if possible. Keep it short, simple.	Do not fail to provide enough context.

TABLE 6.10 (Cont.)

<i>Content</i>	<i>Do</i>	<i>Don't</i>
Persuasion	Try to include only two support points. Generally, one point gets through, two might get through, more never get through.	Don't make it long and bothersome.
Rude/taboo words	Never.	
Sarcasm	Do not use.	

*Completeness* – help the reader understand who, what, where, when, etc. In face to face communication or in other situations, it is easy to gather related information to the core message. However email lacks this additional context, and may be read much later when the surrounding details are no longer fresh. Therefore, identify yourself and the topic clearly. When responding to an email, keep any previous email(s) in your response.

*Clarity* – avoid complicated grammar. Keep it simple.

*Simplicity* – Avoid complicated and delicately nuanced ideas. Keep it simple. If you have much to communicate, do it face to face, by phone, or in a longer attached document with supporting info.

Only one main subject – discuss only one main topic in one email. Send a new email for any new topic.

Try to include only two or three support points, if possible. Why? The reader may not have time or focus to manage more. The authors' experience is that "one point gets through, two might get through, more rarely get through".

This is especially true for high level managers who often simply do not have time for more than minimal and clear communications.

Length – keep it short.

### ***Casual abbreviations***

As a rule, do not use casual abbreviations even in casual email. These change frequently and therefore may easily be misunderstood. Some are funny...but some are quite rude! Never use a rude one in your emails or other writing. From the list below, ASAP, COB, and FYI are widely used in business. You must recognize some of these but avoid them in general.

ASAP – as soon as possible

COB – close of business (usually means 5 pm)

FYI – for your information

LOL – laugh out loud

OMG – oh my god

ROFL – roll on floor laughing

W84it – wait for it

IMHO – in my honest opinion

IIRC – if I recall correctly

FUBAR – damaged beyond all repair

### ***Some last points of email etiquette***

- Use common business acronyms and jargon with other professionals who know them – it will show that you are also professional.
- Do not use slang and local abbreviations in business email at all.
- If you are forwarding or re-posting a message you've received, do not change the wording. You may shorten the message and quote only relevant parts, but be sure to properly identify the source.
- In order to ensure that people know who you are, be sure to include a line or two at the end of your message with contact information ... keep it short, no more than four lines.
- A single address may go to a group even though the address looks like it is just one person. Know to whom you are sending!
- Be careful about cc's when replying. Do not accidentally exclude people. Also, do not continue to include extra people if the messages have become a two-way conversation.
- Do not write with all capital letters. IT LOOKS AS IF YOU'RE SHOUTING ANGRILY. This is true for email and all writing. Do not use all capitals for brand names like TOYOTA.
- Never write anything in an email that you would not write in a letter or memo ... foolish words may return to you!

Adapted from: [www.rfc-editor.org/rfc/rfc1855.txt](http://www.rfc-editor.org/rfc/rfc1855.txt)

### ***Section summary***

Select the means of communication based on the contents; choose the best method for the level of expression and complexity. Carefully design your email from the subject line to the closing to get the right content to your audience in the right way.

## Negotiation error: when to go slow

**TABLE 6.11** Error: When to go slow

<p>Nonaka: Let's start with the price, is \$5.50 per unit OK?</p> <p>Tanaka: Sure! Now let's talk about delivery time.</p>	<p>Nonaka should now realize that \$5.50 was very favourable for Tanaka. Nonaka should have opened higher to gain value for his company.</p>
<p>What can Nonaka do? The opportunity to get a higher price has gone. The opportunity to get a concession for coming down has gone. Nonaka can try to be more careful on another issue and link it to the price.</p>	
<p>Nonaka: OK time delivery, this is difficult for us because of the busy season. We are scheduling the work for the end of October.</p> <p>Tanaka: We need to get the work somewhat sooner ...</p> <p>Nonaka: Sooner? Do you mean September?</p> <p>Tanaka: Actually, early August would be the best.</p> <p>Nonaka: We could manage that but set up and preparation will not be as efficient. If you are willing to pay a little more, \$6.25, we would be able to manage around the first week of September.</p> <p>Tanaka: Well, in that case ...</p>	<p>Now Nonaka has made an offer and found out more about what Tanaka needs. Nonaka's offer is well structured, getting plus \$0.75 but not committing to an exact time.</p> <p>Now, Tanaka has a reason to consider paying more and the two parties can explore the situation constructively.</p> <p>In the end, Nonaka can drop the price again, but only if there is a gain in some tangible or intangible way that is important.</p>
<p>But let's think about Tanaka's quick answer, "Sure!" What did that quick answer signal to Nonaka?</p> <p>By answering so quickly, Tanaka let Nonaka know that the price was too low. As a result, Nonaka knew to try to increase the price. Nonaka is a smart negotiator who got good value for his company without damaging the other company.</p>	

# 7

## NEGOTIATION TACTICS

### Tactics at the table

This chapter contains a few points about tactics used at the negotiating table. Tactics means *actions you take during negotiation*. First, we will consider distributive tactics. These have the purpose of improving your outcome regarding resources you need to get. Distributive tactics are tactics that match well with a competitive strategy and will not help to build good relationships. In fact, the opposite is usually true – these tactics damage relationships.

### *Distributive tactics*

**Flinch.** To flinch means to draw back in pain or surprise. In a negotiation, a person might flinch in reaction to a demand or proposal that seems extreme. A very strong flinch might include showing anger. A flinch can cause the other party to give a concession, but it may also damage the relationship as shown by Fassina and Whyte (2013). Their research also explained that a flinch may be natural or fake.

**Higher authority.** Sometimes a negotiator will refuse to agree to a proposal that is entirely possible. In order to get more concessions, the negotiator might insist on getting approval from the boss. This negotiator may go out of the room and pretend to call the boss, hoping it will seem as if it is not possible to give a small concession.

**Silence.** With some individuals, and even some cultures, silence feels uncomfortable at the negotiating table. If one side feels uncomfortable with silence, it may be possible to get a concession simply by looking thoughtful. Example: “How about \$10,000?” (no answer). “Well, then \$9,000?” In this example the silent party does not need to give a concession in order to get a concession. While it may be effective, it is not a helpful tactic for building relationships and trust (see Figure 7.1).



**FIGURE 7.1** The silent rejection tactic

Experienced negotiators will *not* drop their price, instead they will wait or ask questions in order to understand what the silent party can agree to.

**Information overload.** This tactic involves providing large amounts of detailed information, spreadsheets, analyses, numbers, statistics, and so on. The intent is to confuse the other party so that they will make a mistake or simply become lost in the information.

**Decoy/red herring/misdirection.** In this tactic, one party does not reveal the true priority of their most important issue. For example, they may want a red car but only ask about green cars. When no green car is available, they unhappily (it seems) accept the red car if it is discounted. The people who use this tactic most successfully are able to gently introduce a bias in the counterparty toward the thing that they don't want.

**Stalling.** It is quite common to create a little extra time for your own thinking during a negotiation by asking for details or explanations that might not be really necessary. This kind of delay is called stalling. Generally, negotiators understand and are comfortable with a little bit of stalling as one party or another thinks and plans. However, it is not considered acceptable to intentionally expend large amounts of time hoping to pressure another party into acting unwisely at the last moment.

If the counterparty stalls a lot, you should be prepared for them to give you sudden, complex offers shortly before the deadline for finishing the negotiation. You should be prepared to say no, to extend your negotiating time, and to use your BATNA. You can use the time in which the other side is stalling to learn about them through questioning and other research methods. As time runs out you should resist the pressure to agree. Instead, it may be possible to ask to work with another negotiator, possibly even moving up the hierarchy to work with the boss of the negotiator!

Another response is to move your schedule forward, inform the other team that you have very little time remaining thus putting the same pressure on them. This is an aggressive approach, and not advisable, just as extreme stalling is not advisable. Last minute decisions and agreements may contain significant errors and result in agreements that are poor for one or all parties, or which lead to expensive renegotiation or collapse.



In the past, US businesses, seeking to quickly close a deal, have been easy victims of stalling and have agreed to unfavourable terms shortly before leaving for the airport. However, smart US businesses are ready to quickly change partners or to allow much extra time for concluding negotiations.

If you choose to stall, you should be aware that the other side may use its BATNA and break off negotiations.

**Last minute demands.** Some negotiators will make a request for a concession very late in the process, even as documents are prepared for signing. This tactic intends to catch the other side off guard or off balance, with the hope of getting an easy concession. Best reaction: don't agree immediately, but make it clear that you have the time and willingness to renegotiate the entire package and all the related linked issues.

Some negotiators will ask for a concession even *after* signing. Best reaction: don't agree immediately, but make it clear that you have the time and willingness to renegotiate the entire package and all the related linked issues. You may however grant the extra concession...why? Because it could help to build a relationship. In some regions, including much of east Asia, a negotiation party may expect to give or expect to request "a little" in the comfortable belief that business partners can do "a little" extra if they are serious about the relationship. If this expectation is accepted and known by all parties, the relationship may improve. However if one of the parties comes from a different cultural background, the request may be damaging to the relationship. In conclusion, negotiators who are comfortable with making demands after signing should first consider whether the other parties are comfortable with accommodating those demands and not make the demand if the other side is unlikely to appreciate it.

### ***Retracting an offer***

Many people consider it unreasonable or even unethical to retract an offer after making it. But is it so bad? An offer is not an agreement. And a whole agreement is not finished until all the parts have been completed and formalized.

On the other hand, if people generally do not expect offers to be retracted, someone who does it regularly may be socially ill – pathological. However, behaviours that seem very wrong among one group of people may seem quite acceptable in another group.

How would you feel if an offer was retracted a day or two after having agreed it during negotiations?

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One person famous for retracting offers and other aggressive negotiation tactics was Steve Jobs, founder and sometime CEO of Apple. A Sony executive commenting in W. Isaacson's (2011) biography of Steve Jobs had this to say about Jobs.

“In classic Steve fashion, he would agree to something, but it would never happen,” said Lack. “He would set you up and then pull it off the table. He’s pathological, which can be useful in negotiations.”

2011, p. 401

Jobs’ success at business negotiation, and his belligerent behaviour are well known. Does that make it a best practice for Apple? Or best for all companies? Write your thoughts here: \_\_\_\_\_

\_\_\_\_\_

What are some reasons not to retract an offer after it has been made?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

What are the reasons to retract an offer after it has been made?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The result for Jobs and Sony was that they did agree to a deal, but only after much time and with fewer of the joint benefits than they might have received. Jobs’ behaviour alienated and upset his counterparty. The negotiations almost broke down. If another party had revealed similar technology, Apple might have lost the chance to get the Sony music.

### ***False concessions***

It is not uncommon to offer a false concession, allowing the other party to struggle to get something that you *would give them anyway*. Your HIT list, discussed above, includes things you *Have to Get*. It might also include things you *Have to Get Rid Of*. If your *Have-to-Get* list includes something you must get rid of, it might be possible to trade it for a concession, as if you wanted to keep it. See the example of a false concession below (sometimes these are called “padded concessions”).

<p>Let’s say that in the course of negotiations, Mr. A [of AMPO] demands in no uncertain terms that Commissioner Daniels be dismissed. Ms. C [of City] protests equally strenuously that her side will never agree to such a move. This is a strategic misrepresentation: City indeed wants to get rid of Daniels,</p>
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but AMPO doesn't know it. Ms. C later "reluctantly" backs down ... and gets Mr. A to make some concessions in addition.

*Negotiation Analysis: The Science and Art of Negotiation,*  
Raiffa et al. (1982, p. 142)

Comment:

Please notice that "strategic misrepresentation" is a polite way to say "lie". This tactic is usually only effective in gaining small improvements and may damage the overall relationship. It is best not to lie, but it is also important not to give something for nothing. In this example, Ms. C perhaps could have openly given away the Commissioner and gained improved relationship without misrepresenting her position.

False concessions are not uncommon, so you should be aware of them. Avoid giving something for a false concession. Make false concessions carefully. If you offer a false concession, you must never reveal that you were planning to give it anyway!

### ***Disinformation stratagem***

The quote below is from Howard Raiffa's (2002) book on negotiation. He describes a disinformation tactic that he punished, but which of course is used in the real world.

One student, let me call him X, playing against Y, excused himself to go to the bathroom and left behind his written confidential instructions. Y couldn't resist noticing X's confidential RV and took advantage of X. Or so Y thought. Y did not know that X...put in a false number. Y lost mightily and X was triumphant. Y complained to the instructor of the unfair practices of X. The instructor docked points from both.

Raiffa, 2002, p. 271

Of course, in a real world negotiation, there is no professor to enforce fairness or ethical behaviour. Clearly, it is ethically unacceptable to trick a business negotiation partner. In fact, if the result is very bad for one side, they may be able in some legal systems to annul the resulting contract legally, if the trick is discovered. Even if there is no court proceeding, discovery of the tactic will probably damage the reputation of the party that managed the trickery. In addition, there may be the cost of lost time and money as a contract broken or terminated must be replaced using other partners.

### ***Ultimatums***

An ultimatum is an aggressive offer usually like this one: "Accept the offer by 1 PM or we are finished." An ultimatum usually damages the relationship and the negotiations in general. Therefore, you should avoid making ultimatums.

### *How to manage an ultimatum*

If another party gives you an ultimatum, you can follow these guidelines:

- Do not react quickly, even though there is pressure to react quickly.
- Play for a little time (see Chapter 6 for useful phrases).
- Coolly compare the ultimatum to your BATNA,
  - ... walk away from the negotiation if necessary.
- Play for longer time:
  - Propose value creating ideas;
  - Make counteroffers;
  - Link existing ideas and goals to the ultimatum.

### *Trashing the product (buyer tactic)*

Sometimes a buyer will attack the product that is at the heart of a sale. The purpose is to show that the buyer is only barely willing to accept the product and therefore the price must come down to their estimation. The process of “trashing the product” can be quite long and thorough, particularly in negotiations with Chinese teams. An individual famous for starting negotiations with extensive trashing of the other parties’ products was Steve Jobs, the founder and CEO of Apple.

Less experienced teams, especially from Western cultures, have found themselves shocked, upset, bored, and irritated after listening to this process for hours or days. However, the best response to this process is to quietly listen, learn if possible how to better satisfy the customer, and not give more than a symbolic concession.

Therefore, you should have some symbolic concession prepared in advance!

The worst way to react is to get upset or lower the price significantly.

### *Lies and detecting lies and reacting to lies*

It is generally wise to check for lies and deception, though without showing mistrust for the other parties. Cellich and Jain (2004) suggest following these three strategies to catch a lie.

- 1) Test the consistency of the other party’s statements by comparing statements and by asking questions to confirm accurate information. This process is also called the “inconsistency trap”. However, an inconsistent negotiator may not be trying to deceive. The negotiator may not be aware of the inconsistency. In such cases the “inconsistency trap” can help to clarify logical errors to the benefit of all parties.

- 2) Communicate in several ways (speaking, writing, email, fax, etc.) because it is harder to lie consistently in numerous formats. When speaking face to face, look for non-verbal cues such as gestures, eye and facial movements that reveal nervousness and possible deception.
- 3) Ask for tangible proof of issues that are in question (regulations, legal agreements, previous contracts).

If you think the other party is lying, you can follow one of these strategies.

- React with silence until the other side clarifies the issues (not helpful if the other party does not understand why you are silent).
- Express concern politely about the possible lie and wait for the other party to clarify it suitably.
- Review your BATNA and decide if you should end the negotiation because it is unwise to work with a party that might lie.
- Increase your efforts to learn about the other party and their interests.

### ***Why you should not lie***

You should not lie because:

- If discovered, the relationship will be badly damaged.
- A contract made based on a lie (or other fraud) can be voided in many legal systems including UNIDROIT, an international contract law accepted and enforced in many countries. After voiding the contract due to a *mistake* based on a lie, the liar may have to pay damages according to UNIDROIT (Art. 3.2(2) UNIDROIT Principles, 2010).
- Your reputation among other businesses may decline.

### ***What to do if the other party ...***

- ... wants a **price too high or low** for you: ask questions about the specific points they expect. Break down the costs item by item. See if you can add or remove expensive or unnecessary items.
- ... delivers a **final demand or request (an ultimatum)** that you dislike such as “\$x is my last offer.” Don’t accept or reject it immediately. Gain time and information by asking more detailed questions about the offer. If this is a fixed BATNA position, you may have to choose to agree or to leave the negotiation. If it is not a fixed point, the other side will eventually allow some concessions or cooperation.
- ... offers a **great price** at the beginning. Do not immediately accept it, even if it is good. Learn more about it so that you can either improve the price or develop a more complex and valuable business relationship with the other party.

... uses a “sad song” to play on emotions. This tactic makes a heartfelt request for significant concessions. In North America or Europe, a “sad song” might come at the beginning or middle of negotiations; pay no attention to it. In some parts of the world, the sad song may require some sympathetic reaction including perhaps minor concessions. However, do not give large concessions for it. In Japan this tactic (called *naniwabushi*) is sometimes used successfully against non-Japanese companies that do not expect or understand it, though research done for this textbook suggests it is less common than in the past. Ignoring the sad song and giving nothing may damage the relationship – it may be part of cementing the relationship for some organizations in some cultures.

**Discuss with your partners:** which of the above tactics are too aggressive? Which are acceptable? Do you think people from different cultures might have different answers?

### ***Avoiding unethical negotiation tactics***

Please visit this useful article by Roger Dawson on identifying and avoiding unethical tactics.

<http://reiclub.com/articles/real%20estate%20negotiating>

Additional reading: “B2B negotiation tactics in creative sectors” by Sigurdardattir, Ujwary-Gil and Candi (2018), identifies categories of tactics and discusses how they are used in arts, entertainment, and other creative businesses.

***Playing the hard card first (Table 7.1).*** Some negotiators like to start with an aggressive stance even though they plan to be flexible and even soft during the negotiations. This is sometimes called *playing the hard card*. This tactic is a kind of impression management, see that discussion in Chapter 2.

**TABLE 7.1** Playing the hard card first

Party A: First of all, I want to let you know that we have cancelled several contracts similar to your proposal because they were not profitable enough.	Comment: Party A tries to show that they are tough negotiators. They hope to decrease Party B’s expectations about results.
Possible response from Party B: I see, maybe we should improve our offer to accommodate you.	Here, Party B seems to be impacted by this approach.
Possible response from Party B: I see. Well, we have a great product and offer, so let’s talk about how we are better than those other companies.	In this response, Party B shows no impact and changes the focus of the aggressive opening to good qualities of the offer.

Why would a negotiator start with a hard approach like this? Write what you think are the advantages of playing the hard card first.

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What kind of negotiators would be most likely to play the hard card when starting negotiations?

- |                              |                                |
|------------------------------|--------------------------------|
| 1. Male                      | 6. From a little known company |
| 2. Female                    | 7. From a dominant culture     |
| 3. Experienced               | 8. From a subordinate culture  |
| 4. Inexperienced             | 9. Respected                   |
| 5. From a well known company | 10. With no reputation         |

If you chose the even numbered selections from the list above, you would usually be right. These negotiators may feel it necessary to start with an aggressive approach because of their own insecurity. Handle these individuals by listening carefully and working through their concerns while showing respect for them and their offers. If a person fitting the odd numbered selections plays the hard card first, you may be wise to consider finding a different partner, whether in that company or in a competitor company. Switching to a person who uses more constructive and synergistic approaches may lead to improved mutual gains.

Why might a negotiator *not* play the hard card first? Write what you think are the disadvantages of playing the hard card first.

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A very aggressive or negative start may immediately lead to a similarly negative response. As we know from the Prisoner's Dilemma game mentioned in Chapter 3, it is most common (and wise) to punish aggressive or other "bad" behaviour by returning the same. The most likely series of events are shown in Figure 7.2.

In short, a negative move provides no incentive for a positive response. Therefore, it is generally best to avoid negative behaviour throughout a negotiation.

### ***Defense against the dark arts: calm and experience***

With time you will learn to quickly identify aggressive tactics as they happen. Simply, you will become more sensitive to tactics. When you identify the tactic, you will know how best to react.

## Positive Negative Moves

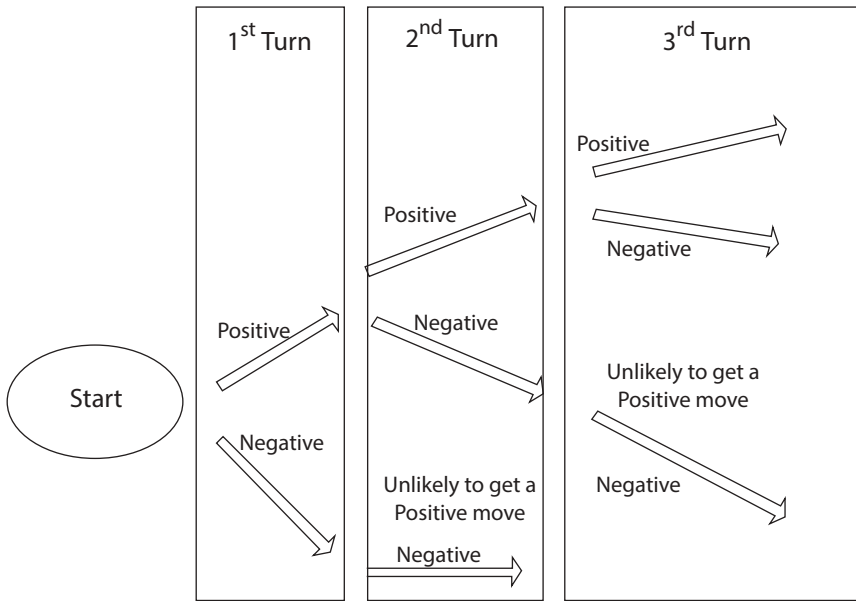


FIGURE 7.2 Start nice or nasty?

Generally, the best reactions combine further communication and managing the relationship. But do not change your position because of the tactic – only change your position based on negotiated concessions and joint problem solving.

In many cases your most powerful defence against aggressive negotiation tactics will be time. The more time you have, the more flexibly, carefully and constructively you can react during the negotiation. Time allows you to react calmly and reject pressure tactics in general. Make it clear to all parties (your boss, the other negotiation parties, your coworkers, and other important stakeholders) that you *need and will use* as much time as necessary to get a result that maximizes gains for all sides.

### Section summary

Use distributive tactics carefully – these are essentially *not* frank negotiation approaches. Avoid aggressive negotiation tactics and the people who use them.

A broadly successful defence against all negative tactics is to keep a cool head and work patiently forward based on the mutual interests of the parties.



### ***Integrative tactics***

***Trading information*** Give the other side information about your business activities and plans while asking about theirs. Allow the counterparties to lead the conversation if they want to. When asked, you should provide information as long as it is not sensitive or secret. The ideas about trading info are included in more detail in the section on Reciprocity.

Which information is too sensitive to share? That depends on your opinion. You may decide that it is OK to reveal all details (FOTE or Full Open and Truthful Exchange) or that some details should be kept secret such as your reserve price (POTE or Partial Open and Truthful Exchange).

***Asking questions to develop understanding*** This integrative approach shows positive interest and helps both sides to declare, explain, and discover their interests. See the section in Chapter 2 called “Gaining and giving information” for more about these questions.

***Trading concessions (logrolling)*** This approach can help to end a deadlock or disagreement. When trading, try to give up issues that are low priority for you and gain issues that are low priority for the other side (but high priority for you). While trading and compromising can never be completely satisfying, it is sometimes the only way to resolve disagreements. If the parties can agree on trading, they may improve their relationship enough to manage value creating ideas and problem solving.

### ***Section summary***

Use integrative tactics to build up relationships and to improve outcomes.

Avoid integrative tactics when the issue or the whole negotiation is clearly distributive and there is no relationship to maintain or improve.

### **CASE 7.1: THE VERY EMOTIONAL CLIENT**

Real life is a complicated and messy thing. Your plans may not last long after making a contact with the other sides in a negotiation. Flexibility is the answer! In the case below we will see how a negotiation party acted and reacted to the behaviour of another party at the table. This example, from the experience of a construction industry manager in Alberta, Canada, shows how one party reconsidered and redesigned its goals, strategy, and tactics as the interaction progressed. At the same time another party in the negotiation redefined their role radically. The third party in the negotiation did not react flexibly and had to collapse in the end.

*Background:* This project was difficult from the beginning. It was a hard-bid, small TI project in a shopping mall with a very short schedule. We (the construction company) ended up with some poor suppliers and had to work long

hours and nights to meet the schedule. The Client also made some changes during the course of our work. With ten days to go, we realized we were going to miss the deadline by four days. Our management and consulting team were made aware of this and the Client planned accordingly. Meanwhile, the millworker was put on notice and was to be held accountable for costs incurred as he was at fault for the delays.

*Issue:* After the Client moved in, he made us aware that he was going to charge us for lost earnings for the four days. We disagreed with him, as there was no penalty clause in the contract and he had made the changes that delayed the project. Because we worked with the Consultant a lot (an important relationship) and the millworker was responsible for the costs, we wanted to try to negotiate to compromise. We asked the Client for a written claim of damages; however, the Client avoided us and delayed providing the costs. Normally, we would have placed a lien against the project, but we couldn't due to the fact that it was in a mall. After 46 days, we received a claim from the Client in the amount exactly equal to the holdback fee (10% of the agreed project fee), including notice that he had no intention of releasing the holdback.

*1st Negotiation:* Our walk-away was 3%, as this is what the millworker offered us to make this problem go away. So this was offered to the Client to avoid further negotiations or legal options. It was rejected. The Client had no interest in budging on his win-lose perspective. Our compromise strategy changed to a competition tactic due to the negotiation style of the Client ("competition").

*Our Position:* Our new target was zero percent loss, as we were quite protected by the contract. We were aware that the Client and his agent (the Consultant) did not communicate well, and that the Consultant was sloppy at reviewing paperwork.

*2nd Negotiation:* The Client started the meeting very emotionally, stating that by opening four days late we ruined his reputation and cost him exorbitant profit. Our team was well prepared and did not get personal or emotional. Our first question was "Please provide documentation supporting your claim". He refused, stating that he didn't have to provide this because his gut told him this was the correct amount and he came to this number from all his years of experience. We disagreed and explained that he needed to prove his number or we would move to legal options as his "gut" would not be supported by the court (we were confident to use a Threat as our tactic, because our documentation exceeded his). He got very frustrated and aggressive. The Consultant called for a quick break to advise their Client. After the break the Client agreed to provide supporting documentation.

We thanked him for changing his position. At that point we asked the Client why we were meeting, as from our review of all documentation we were not late but, in fact actually one month early. This stopped all conversation for a minute or so. The Consultant spoke up asking us to clarify this, as we missed the contract date by four days. We responded by pointing out that there were numerous changes to the project and we added time to each change order and the Consultant signed them. There was conversation between the

Consultant and the Client. They produced four approved change orders totaling a three-day extension. The Client then argued that all of his losses happened on the fourth day and that if we would have completed within the three days he would not be looking for damages.

We then reminded the Client that we had another change order approved that added 30 days to the contract. This caused lots of commotion as the Consultant could not find the change order. The PM produced the signed paperwork proving our claim. The Client was raging at us and his Consultant, specifically when he realized that the change order was approved a couple of days before the original contract completion date. We responded by stating that contract law supported us and we expected to be paid in full. The Client sat in his chair with a very defeated look on his face and the Consultant called for a break. After the break the Consultant stated that they were willing to negotiate and accept our original offer of 3%. We declined and stated that we would seek an Alternate Dispute Resolution (ADR) or legal means to collect all outstanding monies. We agreed to park the issue and end the meeting.

We soon received a call from the Consultant stating that the Client agreed with our position, mostly. It was made clear that the Client needed a token to release payment or he would find other ways to drag out payment, including the legitimacy of the approved change orders. Satisfied that a small token would end this and receive payment, we offered 1% to the Client and it was accepted (his strategy changed from compete to accommodate or compromise). We then got an agreement with the millworker to cover this cost, which he was glad to do as it was less than his first offer (3%). We were quickly paid by the Client, just 24 hours later.

Questions for discussion:

**What were some tactics used by the Emotional Client?**

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**Which of the Emotional Client's tactics were...**

successful: \_\_\_\_\_

unsuccessful: \_\_\_\_\_

**Was the negotiator able to strengthen their BATNA against the Emotional Client?**

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**What role did the Consultant play in this negotiation?**

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**What were some of the errors of the Emotional Client?**

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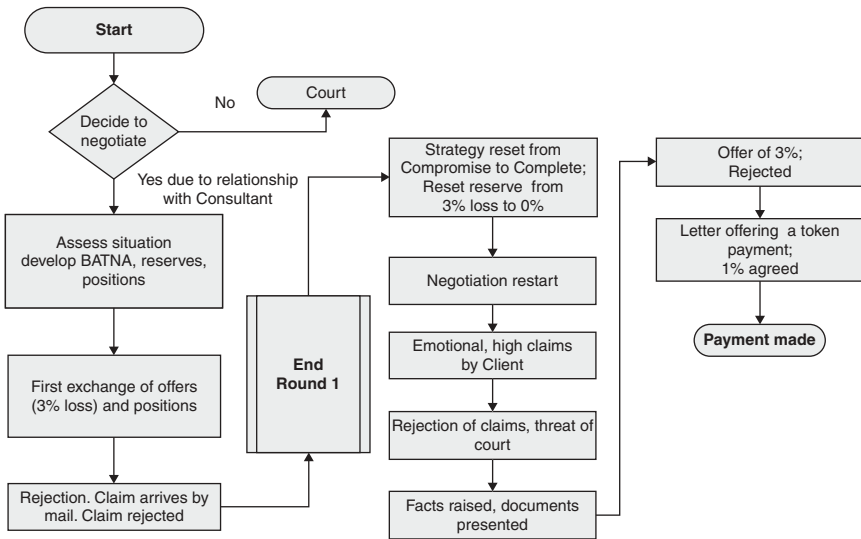
**How well do you think the negotiator knew the Consultant?**

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Flow chart process:



**FIGURE 7.3** Flow chart of the Emotional Client

**TABLE 7.2** Interests table for the case of the Emotional Client

<i>Party</i>	<i>Issue 1</i>	<i>Issue 2</i>	<i>Issue 3</i>
Client			
Constructor			
Consultant			

**TABLE 7.3** Stakeholder analysis table for the case of the Emotional Client

	<i>Rights</i>	<i>Responsibilities</i>	<i>Wants</i>	<i>Needs</i>	<i>Comment</i>
Client					
Constructor					
Consultant					

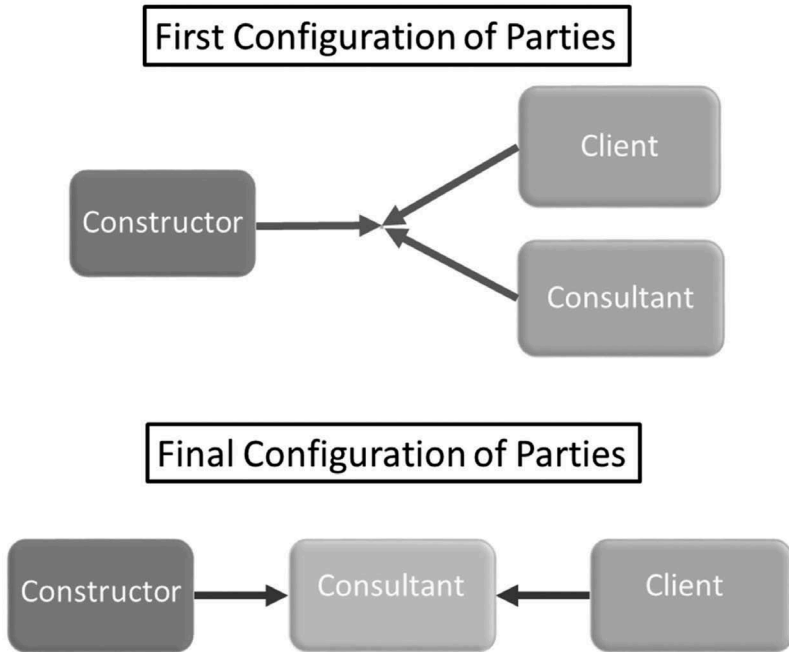


FIGURE 7.4 How the roles changed

In Figure 7.4, we can see that the first round of the negotiation put the client and consultant in a position against the constructor. As the negotiation moved into the second round, the consultant stopped supporting the client and moved to a position where he could support both sides somewhat and mediate the conflict to a successful end. The consultant showed insight and flexibility in changing their position.

### Persuasion approaches

Negotiators can use several approaches to influence the thinking of the other sides. Li and Sadler (2011) summarize nine varieties of influence strategies, several of which we will discuss here.

#### *Legitimizing*

This approach may be effective with parties that place high importance on relative rank and prestige of individuals and organizations. The legitimizing approach links proposals to respected people and institutions to increase the respect for the proposal. For example, the proposing side may point out that it is similar to the work of a famous person familiar to the other parties. Suggesting that your proposal has been accepted in the past by a famous person like Bill

Gates or Jack Ma might influence the other side to accept it. To be effective, the choice of legitimating person or organization must match well to the knowledge and thinking of the other parties.

### ***Rational persuasion***

This approach relies on thinking that seems logical and sensible to the other parties. Presenting data about industry standards or the expectations of people in a certain region may help a party to agree to a proposal that is in line with that data. For example, offering salaries that are 5% better than the local standard instead of paying each individual according to their specific merits. This approach may be most effective with negotiators who are rational in style as described in Chapter 9.

### ***Inspirational appeals***

This approach relies on transmitting emotional involvement and commitment to the other parties. Showing how a proposal would benefit a large number of people or a specific group might make the proposal more appealing. For example, a member of an ethnic minority may be swayed by a proposal that benefits other members of that community. This approach may be effective with parties that have a strong sense of community and collective action, see the comment on *guanxi* in Chapter 6.

### ***Ingratiation***

This approach is a way to build relationships, however it is insincere. Flattery may be effective in the short term, however long term relationships are best when built on mutual success and satisfaction. Ingratiation is a process to urge the other sides into positive thinking before asking for high demands that they might not otherwise accept.

### ***Strategic exchange***

This approach calls on previous interactions where one side has made concessions and would now like the other parties to make concessions. This integrative tactic can only work where there is a strong relationship that has survived several transactions and will probably continue to survive for many more. If the party receiving the strategic exchange proposal does not foresee a long term positive relationship, it will have no motivation to agree.

Other approaches described by Li and Sadler include coercive threats, discussed in Chapter 6 of this textbook, as well as jointly consulting to solve problems, a topic which is discussed in several places in this textbook.

### Section summary

Use various persuasion approaches depending on the nature of the situation and what you know about the counterparty.

### Humour in the negotiation

*Appropriate humour* has at least three useful functions in a negotiation:

- to decrease tension;
- to build rapport; and
- to devalue a proposal.

In a negotiation you can use humour carefully to relax the groups. At the same time, humour builds rapport and positive feeling among the negotiating parties and can be used systematically to manage the relationship (Vuorela, 2005). Humour therefore has a similar positive effect and value as small talk. Humour requires the participation of all parties to be successful, so it is fundamentally cooperative (Vuorela, 2005). Any jokes should be easy to understand, simple and only gently distracting. Jokes that distract too much from the atmosphere and the topic will seem unprofessional and will not build rapport.

### Devaluing a proposal

Read the example, and give your reaction to the question:

His negotiation partner had suggested a much higher dollar allocation for sand. The first negotiator responded:

*“Yeah, we need to get some sand, but we’re not trying to build Malibu Beach here, man.”*

Halpern and McLean, 1993

What do you think the “second negotiator” felt when hearing this response?

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Used this way, humour is a tactic that can make a proposal you want to reject seem bad to all parties. Careful and gentle use of humour like this can make a proposal seem weak without damaging the relationship. Slightly stronger use of such humour may seem mocking and will probably damage the relationship.

Here is the above example of devaluing humour and the result as reported in an academic journal.

As an example, one of the male participants did not want to spend a lot of money on sand for ground cover. His negotiation partner had suggested a much higher dollar allocation for sand. The first negotiator responded:

“Yeah, we need to get some sand, but we’re not trying to build Malibu Beach here, man.”

With this joke, he made the other negotiator’s request for more sand look ridiculous.

They ordered less sand.

Halpern and McLean, 1993

*Inappropriate humour* will damage the relationship and the joke-making side can lose status and seem foolish. Inappropriate humour includes complicated jokes (including satiric and ironic content), jokes on taboo or sensitive subjects, and anything that could seem insulting. Of course, please do not tell jokes as if a comedian had joined the negotiating team!

### ***Revealing issues through humour***

In her work on humour in negotiation, Joan Emerson (1969) found that a joking reference to a difficult or even taboo problem could help identify and address an issue to other parties. Because an issue might be unacceptable in a serious conversation, it might be acceptable in a joking context. And that in turn could allow the topic to be handled seriously.

Example of poorly executed humour:

Party A: You know, this reminds me of the time I was in a bar and a doctor and a horse walked in.

Party B: A horse?

Party A: Yeah, and the horse says,

“Give me a beer and a gallon of water.”

Party: Who said that?

Party A: Well, it is a joke, you see ...

Party B: Oh. Let’s consider the cost in your proposal ...

In this example Party A starts a joke, but Party B has not identified the statement as a joke. This means that Party A has tried the joke at the wrong time, or has not introduced it properly. As a result, Party B may consider the other person to be foolish or wasteful of time.



Example of well executed humour to decrease tension:

*Extract one: Client Negotiation*

- |   |         |  |
|---|---------|--|
| 1 | SellerJ | So we in the U.K. we've got about just     |
| 2 |         | (SIPS COFFEE)                              |
| 3 |         | round about seventy people working for     |
|   |         | the company <b>we've got</b>               |
| 4 |         | <b>forty-two service engineers running</b> |
|   |         | <b>about in little white vans [an'</b>     |
| 5 |         | <b>things like that</b>                    |
| 6 | BuyerM  | <b>right ha</b>                            |

Reprinted with permission, Vuorela, 2005, p. 112

Vuorela (2005) holds that this humour-based approach strengthens feeling of joint purpose in some negotiations.

### ***Section summary***

Humour is a useful tool to build relationships and send signals about offers. However, it must be used carefully with sensitivity toward language skills and face saving issues.

## **Ethics**

### ***Do no harm***

Your negotiating should always focus on building value for your company and your projects. At the same time, you should actively try to not hurt the other side when sharing existing or future value. Actively means that you review the agreements and the processes before completing the negotiations. This is quite different from passively allowing the other parties to make mistakes that are part of (or not part of) the business being negotiated.

Q: Why should I spend the time and effort to check that the other side is OK?

A: Because being part of a negotiation with a bad outcome for the counter-parties will directly harm them and indirectly harm you. In the same way that you would help a person avoid an accident on the street, as a businessperson, you are expected to help others avoid damaging errors.

Of course, if your negotiating partner comes to harm, others may suspect you of harming them and the result may be damage to your reputation. Whether you are or are not guilty of harming the other party, the damage to your reputation may occur – therefore it is best for you to actively prevent damage to your reputation by helping your negotiation partners avoid damaging errors.

Additionally, if your negotiating results are too hard for the other parties to manage, they may

- a) go out of business;
- b) feel forced to break an agreement;
- c) refuse to do business with you in the future; or
- d) try to renegotiate the agreement.

Any of these results means additional cost and lost time to you.

### *Example*

Company A managed a hard bargain against company B to supply memory chips. Company B agreed to a very low price, just a little more than their costs. Suddenly, a new regulation caused one of their inputs to become more expensive and they were forced into bankruptcy. Company A suddenly found itself with no supplier, as well as an urgent need to find a new partner and make a new agreement. In the months spent searching and negotiating, they lost market share, income, and the faith of their customers.

### *Help others build value*

You should help the other parties in a negotiation build value in activities you are not interested in.

Q: Why should I help some company make money when it does not include my company, especially if it is not even my business area?

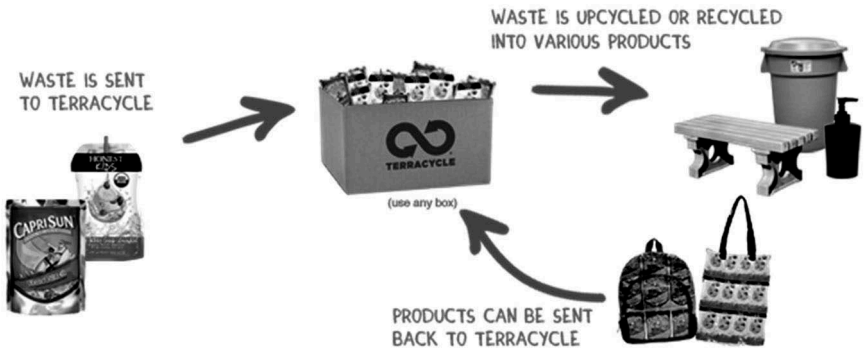
A: Because you will benefit from the improved relationship between the two companies.

A: Directing the other parties towards good business ideas will not prevent you from getting full value out of the negotiations.

A: You may be able to build a more robust agreement that will not collapse or need to be renegotiated if there is an economic downturn or if unexpected problems arise. That could save you money and time,

### **CASE 7.2: ETHICS MAKES MONEY FOR HONEST TEA AND CAPRI SUN**

A drinks maker, Honest Tea, searched for a reusable package for their kids' drinks. They found none. Finally, they found a recycler that could use the drink package (a pouch) in some fabrics ... but what to make? In 2007, Terracycle suggested bags and kids' backpacks. The backpacks carry the name of the recycler and Honest Tea (good for corporate image) but Honest Tea takes no profit from the bags. The recycler, however, is able to grow a reliable business ... which serves Honest Tea. See [www.terracycle.net](http://www.terracycle.net) for more products.



**FIGURE 7.5** Recycle your waste with Capri Sun® and Honest Kids®  
 Source: Image used with permission of Terracycle.

Traditional view:  
 ethics are just another cost

Gross income	100,000
Ethics	-15,000
Insurance	-8,000
Maintenance	-10,000
Taxes	-6,000
Net Income	61,000

New view:  
 ethics can contribute to income

Gross income	100,000
Ethics	15,000
Insurance	-8,000
Maintenance	-10,000
Taxes	-6,000
Net Income	91,000

**FIGURE 7.6** Ethics as a net gain

This ethical approach also benefited CapriSun, a maker of drinks for kids, and competitor to Honest Tea. CapriSun joined the Terracycle pouch recycling programme in 2008.

The case above supports the idea that ethics can contribute to the strength of your company. Ethical business behaviour is not just a cost (see Figure 7.6).

***Be ethical, but get all the value you can***

Your ethical actions do not prevent you from getting more value than the other side, nor from taking value that the other side does not recognize or seek or care about.

**TABLE 7.4** Ethics in action

<i>Dialog</i>	<i>Comment</i>
Tanba Agro: By the way, do you want us to take away the eggshells?	Tanba can use the eggshells as a source of calcium for the chickens. They will save money by taking the eggshells. They have agreed to get a valuable item (eggshells) from Hyogo for free.
Hyogo Cake: What? We usually throw them out.	
Tanba Agro: That is 100kg of trash every day, we can pick them up a little cheaper than the cost of the trash service.	
Hyogo Cake: OK!	

In your opinion, is there an ethical problem in the above conversation, or not?

### *Example*

Let's remember Tanba Agro and Hyogo Cake. The cake factory finally agreed to buy the eggs. Consider their next conversation.

### ***Business negotiator's oath of ethics***

I will not actively harm another person or company with the process or results of negotiating. I will actively check that the other parties in a negotiation are not harmed by their or my actions or agreements.

### ***Section summary***

Be sure not to harm other companies, organizations, or people intentionally or unintentionally as a result of your negotiating.

An ineffective negotiation occurs when there is no intention to commit to the agreement and if the negotiator only aims to beat the others with fake promises.

### **Who should you not negotiate with?**

There are some companies and organizations you should avoid; they may cheat even if the agreement is robust. Use your BATNA, because deals with them are bad, or very risky. Learn about organizations you should avoid by reading and by talking to people with more experience. Try to get positive references about an organization before starting negotiations.

Generally, avoid companies that:

- A) Have a reputation for very aggressive agreements and hardball tactics;
  - a. Some big car companies, for example, are excessively demanding with suppliers regarding price, delivery schedule, response time, exclusivity, etc.
  - b. Some large retailers force prices down to the level of minimal profit making it hard for the supplier to survive.
  
- B) Have a history of fraud or legal problems;
  - a. Some companies have transferred Intellectual Property or secret business information to other companies or governments. Don't give those organizations the opportunity to sell your secrets! Even working with organizations like that may damage your reputation.
  - b. Some companies have many on-going disagreements about contracts. They may frequently be in legal court, arbitration, or in settlement actions. Do research to find partners who have a history of completing contracts with few legal disputes.
  - c. Some countries regularly rule against foreign companies when there is a problem – avoid doing business with organizations in those countries.
  
- C) Have unethical/illegal behaviours.
  - a. Some companies mistreat their workers in their home country or in other countries.
  - b. Some companies have frequently made low quality or unsafe products.
  - c. Some companies may want to negotiate with competitors to set prices within the industry (see news article [www.nytimes.com/2013/09/27/business/9-auto-parts-makers-plead-guilty-to-fixing-prices.html?ref=business](http://www.nytimes.com/2013/09/27/business/9-auto-parts-makers-plead-guilty-to-fixing-prices.html?ref=business))

If you must negotiate with a company of this sort, be sure to have a strong BATNA. It may be better to use the BATNA before you start talking!

Why do the “bad guys” continue to conduct business and find partners? After decades of bad experiences, we would expect whole countries, not to mention companies, to be shunned. Yet new companies are attracted to them despite their bad reputation and record.

The answers to this question seem to fall into these categories:

- 1 Extremely appealing terms are offered. Inexperienced businesspeople may be strongly attracted by the chance to make large profit margins. However more experienced negotiators will recognize that the offer can only be very appealing if the other side never pays out fully.

- 2 Many businesses think they are smart enough not to get tricked, “It won’t happen to me!”
- 3 No alternative due to weak BATNA or monopoly situation.
- 4 Social/political pressure requires dealing with a bad partner, at a loss, in order to gain other profitable opportunities.

***Section summary***

Avoid negotiations (and close partnerships) with organizations that could hurt your business or your reputation.

# 8

## WIN AT HOME BEFORE YOU GO

### **Educating the boss and coworkers**

Teach your coworkers, superiors, and staff about negotiation so they can help you and additionally so they can understand your results. You now know that a negotiator needs time and information to prepare for a negotiation. The people who work with you may not know that. They may not understand how much information you need to have. They may not understand why you need to think the way your negotiation counterparties think. Without understanding and support at home, you may not be successful. Therefore, you will have to explain basic ideas about negotiation including the need for time and resources while preparing in advance of a negotiation.

After a negotiation, you will always need to explain why the deal you got was good. You might have to explain to your boss, your coworkers, the board of directors, or other stakeholders. If they do not understand negotiation, they may not understand your results. In that case, you will have to explain key concepts to them.

### ***Questions***

What points and what terminology should you teach your coworkers and other management staff regarding negotiation?

List some points that you feel are necessary, but not too difficult to teach.

- |          |          |
|----------|----------|
| 1. _____ | 5. _____ |
| 2. _____ | 6. _____ |
| 3. _____ | 7. _____ |
| 4. _____ | 8. _____ |

## Section summary

Educate your boss and coworkers to gain their support and understanding before and after the negotiation. You will not improve the long-term success of your company if you are the only good negotiator in it!

## Back table negotiations

In your working life, negotiation tasks will generally start with requirements from your boss. A simplified negotiation task might be, “Don’t spend more than \$X, get these concessions, finish it by Friday next week.” Notice that this sort of task assignment is lacking even enough information to complete the HIT list discussed in Chapter 4!

As a negotiator, you have to understand and satisfy your back table. In the end you will have to explain to that person or group why you agreed to the deal you got. You can also indirectly communicate to the back table of other parties. An Austrian business owner interviewed for this book said he always gave economic reasons for his offers that the other party could take to their boss. A Japanese business owner in Tokyo described in an interview how she explains advantages for the other side based her knowledge of their bosses and companies.

### CASE 8.1: FUJI SEIKO ACTIVITY

Consider this case regarding Fuji Seiko.

You have offered the Fuji Seiko negotiation team the terms below. But you know they have to report the offers to headquarters for approval. Your product is a little better than your competitors’ product, but a little more expensive. How would you help the Fuji Seiko team win the argument with their bosses?

Terms:

- Three partial payments instead of one lump sum.
- Delivery one week earlier.
- Adjustment of color to match the Fuji Seiko product.

Example:

By the way, let your CFO know that we will accept three payments with no price increase – it may help with cash flow.

Your arguments:

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Write one or two reasons why you should consider the back tables of other parties in a negotiation.

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### The back back table

Behind the back table you may find the back back table, a spooky space inhabited by ghosts. These ghosts are people or organizations that you cannot communicate with but which may have influenced your choice of outcomes or your negotiation process. Examples of these ghosts include retired or even deceased coworkers, company founders, idealized famous personalities, political figures, and mythic business leaders.

As an example, the author is aware of a Tokyo company that could not divest itself of an underperforming US bank because its acquisition had been made by an executive manager whose importance in the company was closely tied to the acquisition. The executive had been retired for 15 years, yet the current directors would not even discuss selling the bank because it might insult that retired person. Even though that person no longer participates in the company, he blocks the discussion to restructure. His ghost at the table stops any movement on the issue.

Ghosts such as the one described can:

- block topic areas from discussion (impose taboos);
- block outcomes even if they represent practical results;
- create a cognitive bias against logical problem solving.

### Section summary

Pay careful attention to your back table in order to move smoothly from talks to agreements. The back table must be satisfied with your negotiation results before a proper agreement can be made.

### Negotiation error: back table out of synch

In the fictitious case below we can see how a manager brought back a result that was unsuitable for and unacceptable to upper management.

### **CASE 8.2: NOT WHAT THE BOSS REALLY WANTED**

Alaana informed Jowa of his assignment to complete a deal with Artix, Inc., a customer, for their cooperation in developing an improved version of pallet lifting equipment. She said, "Please negotiate the details with Artix regarding the commitment of hours and staff as well as the expectations of each side. Above all we have to keep our costs down and keep ahead of our competitors."

Despite this fairly vague statement of goals, Jowa researched the relationship with Artix, learned about the individuals he would talk with and put together a reasonable agreement committing both sides to exchanges of information, discussions, testing, and so on. The agreement put much of the burden for action on Artix and avoided exposing Jowa's company to open commitments of staff and time.

When he brought the draft agreement to Alaana for approval, she looked somewhat annoyed. "You let them take over the project! They will have so much of the inside knowledge that they will not need us." She then negotiated a new agreement without the support of Jowa.

Jowa thought this result was unfair. However, he realized he had not kept in close enough contact with Alaana. His mistake was to let his negotiation efforts get out of contact with the back table.

### **Problem solving techniques**

Many experienced negotiators are good at problem solving. They think creatively and react flexibly, and they know useful tools and techniques. Some of those tools and an overall process are presented in this section. Sometimes pressure helps creativity; an insightful business student pointed out to the authors that she was better at problem solving when pressured by having a weak BATNA.

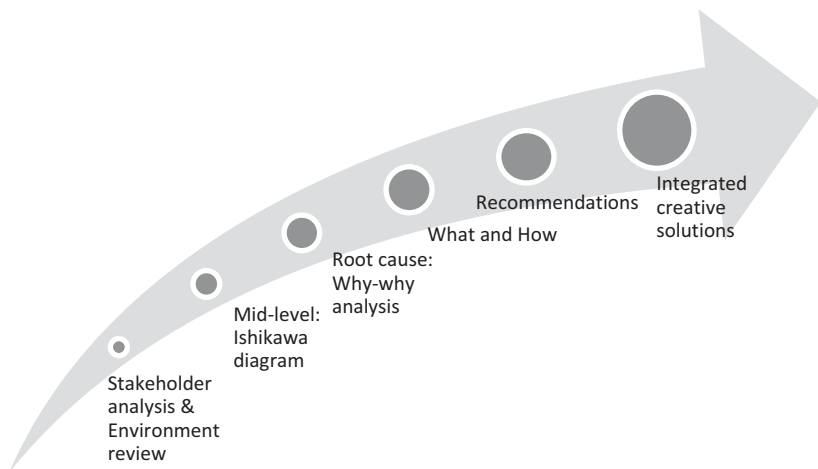
An overall process for problem solving might start with a high-level analysis of people and facts, describe problems, identify root causes of problems, and find possible solutions for discussion. The overall process should begin long before the negotiation parties meet. Later, however, the process should include all parties – doing so will boost communication and problem solving power. The sequence of steps shown in Table 8.1 below is an easy way to start, but it is not the only path. With some practice and experience, you might find a sequence of steps you prefer.

### **Ishikawa diagram (fishbone)**

An Ishikawa program is used to identify and categorize issue contributing to a problem. A useful diagram can be made quickly (see Figure 8.1). Generally these start with the categories shown in the diagram shown in Figure 8.2: People, Policies, Equipment, and Environment. The problem itself is written into the "head" of the fish (it is often called a fishbone diagram).

**TABLE 8.1** Tools for problem solving

<i>Step and Level</i>	<i>Tools</i>	<i>Purpose</i>
1 Macro environment level	Stakeholder analysis; Strength-Weakness-Opportunity-Threat (SWOT); Political-Economic-Social, Technological-Legal-Environmental (PESTLE)	Establish the groups and individuals involved directly or indirectly, their level of power (the ability to influence decisions), their needs, goals, and interests. (See Appendix VI for further explanation.)
2 Project level	Ishikawa diagram (fishbone)	Roughly sketch the issues contributing to a problem.
3 Root level	Why-why (5 Whys)	Determine trigger causes and the root causes of each issue.
4 Root level	Goals and fixes	Identify what to do and achieve in order to solve the problem.
5 Root and project levels	Recommendations	Propose how to solve each problem.
6 Project level	Creative solutions and action plans	Expand the discussion from single problems to integrate related problems and solutions.



**FIGURE 8.1** Possible sequence of analyses for problem solving

The diagram in Figure 8.3, for a high-speed rail line, based on a student’s work, uses the four basic categories to find causes of complaints about quality of life by residents near the rail line.

The four categories, people, policies, equipment, and environment, in the examples above are just suggestions. They are a good starting point because they

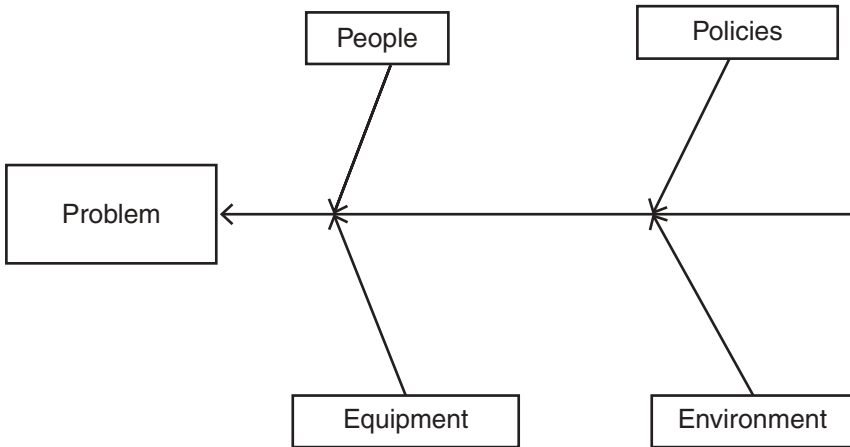


FIGURE 8.2 Ishikawa diagram, basic

## High Speed Train Line

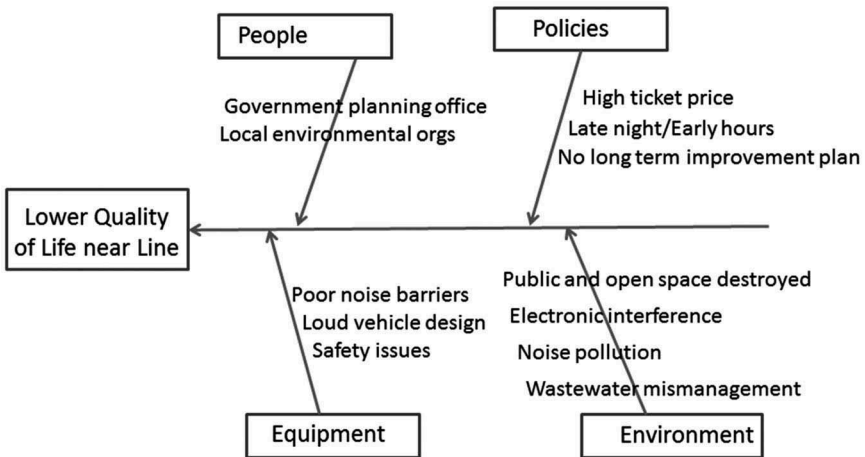


FIGURE 8.3 Ishikawa diagram, train line

cover common problem areas. However, when working on a negotiation problem, start with these four, but also replace and supplement them with other categories that are suitable for the problem you are working on.

### Why-why (five whys)

After using the Ishikawa fishbone to identify the contributing problems, select one for better understanding. Drill down into the contributing problem to find a root cause using the “Five Whys” approach developed by Toyota Motor Corporation.

Each time the why question has more than one answer, the diagram branches. Each of these answers may continue or branch until arriving at a root cause.

Notice that different branches may come to the same answers and root causes.

Some branches finish sooner than others – so how can we know when to stop asking why? Analysts usually follow these guidelines:

- Circular (points you back to a previous why in the same branch);
- No longer logically related to the original question;
- Outside the range of the problem/organization;
- Natural limits of physics.

In the example in Figure 8.4, the starting problem is the refusal by one party to agree to share data collected by their autonomous cars and sensors. We ask first why that is a problem. Then we ask why for each answer until we come to a stopping point. In this case we appear to be finished after three levels of Why. The diagram then shows several root causes. Some branches join with other branches and come to the same root cause. The root causes are starting points for fixing the original problem.

Looking at the example in Figure 8.4, we can see that some branches come together because problems in the middle of the diagram sometimes have the same intermediate cause. Further, a root cause might appear in more than one place. However, branches with the same intermediate causes should end with the same root cause, or be explained in a note. The root causes are made clearer in Figure 8.5.

The why-why diagram in Figure 8.5 now clearly shows the root causes no matter where they appear. Some of the root causes appear to be the same despite coming from different branches (note the items in white boxes).

## What to do and how to do it

Now that the why-why has been completed with clear root causes, it is possible to add a What column at the edge of the why-why that shows in simple terms what needs to be achieved.

The What column is an easy way to communicate the clear goals that correct the root causes of the starting problem. Additionally, the graphic communicates that some of the root causes require the same action. In the graphic in Figure 8.6, we have a total of five Whats in six boxes that we must fix.

The next step is to add a How column at the edge after the Whats in order to show how to achieve the Whats. This How column does not need to be very detailed. It is a starting point for serious planning and joint work with the various partners in the negotiation (see Figure 8.7).

Now that a rough set of problems and solutions exists, you can join forces with the other negotiation parties to work out the details while creating and claiming value in a well informed process.

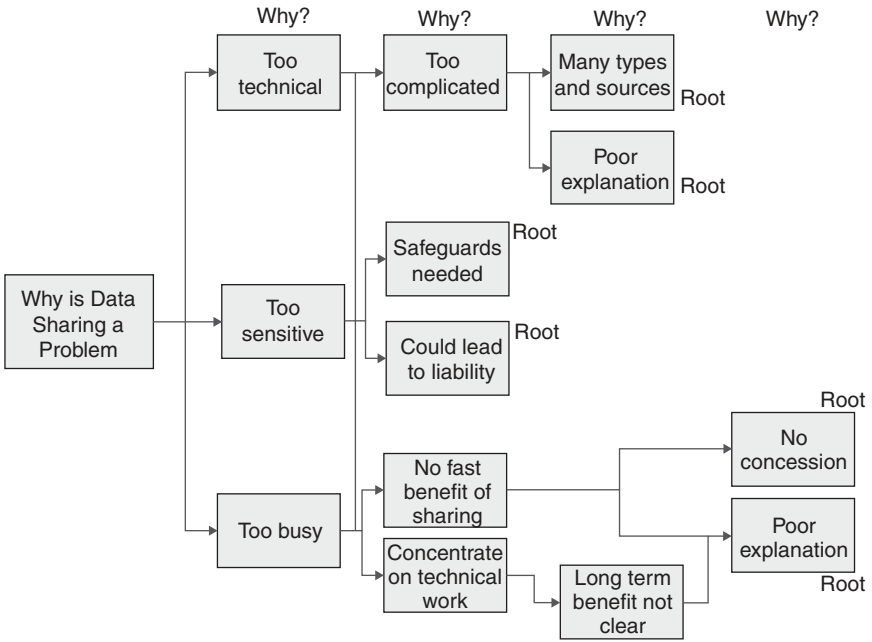


FIGURE 8.4 Five Whys example

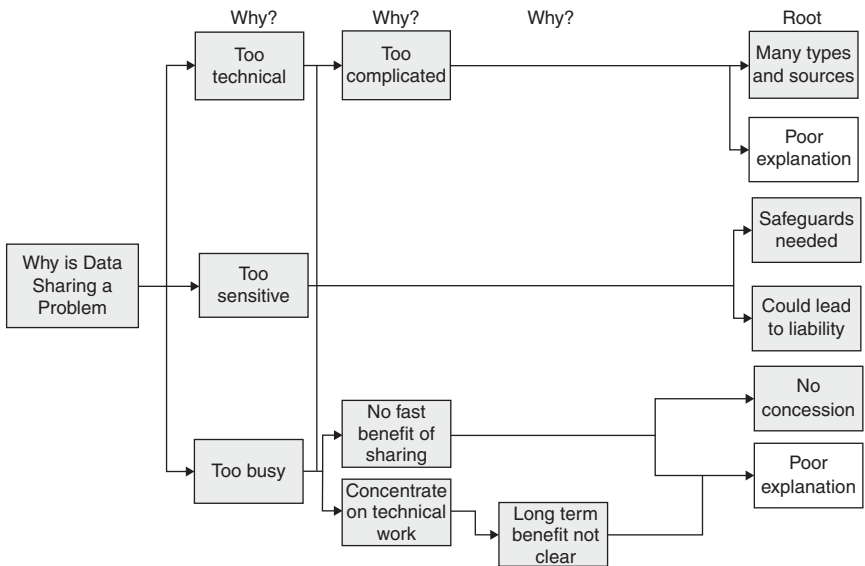


FIGURE 8.5 Five Whys: Roots made clear

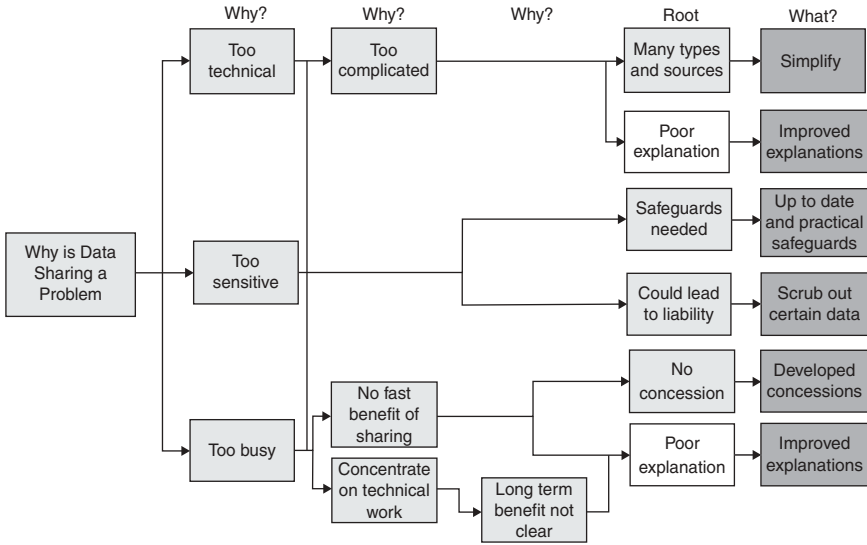


FIGURE 8.6 From Why to What

### Creative solutions

In the first five steps in the problem solving process shown in Table 8.1 this textbook proposes your team might work alone or with the negotiation partners. If there is an established comfortable relationship, all steps can be done jointly. If the relationship is not good, the first steps can be done alone, however in the last step of the problem solving sequence the parties must unavoidably join forces. But some might say, “Better to work on the solutions alone and be sure to get the best ones for yourself! Don’t let the other parties join!”

What do you think? Please write down the advantages and disadvantages of working out the solutions without the negotiation counterparts.

*Advantages of working on solutions alone*

*Disadvantages of working on solutions alone*


If you consider the potential for improved ideas as well as the value of building satisfaction and relationship and the possibility for building those things through frequent interaction over problem solving, you may see good reasons for sharing the solution creating step and even most of the earlier steps.

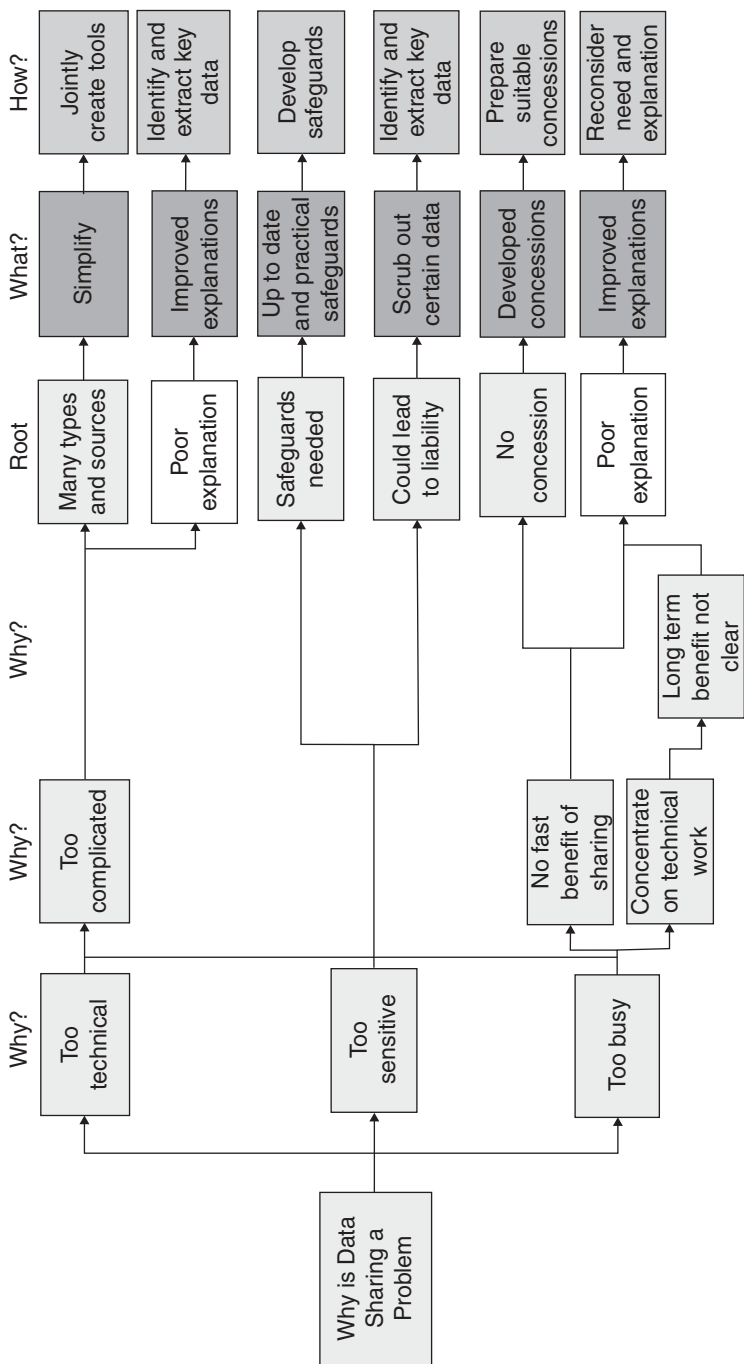


FIGURE 8.7 From What to How



### Section summary

Use these techniques (and other approaches) to solve problems both before the negotiation and during with the participation of all other sides.

### War gaming as preparation

This textbook includes real and fictitious cases to use in learning how to prepare and execute negotiations. Some of the cases appear as games and role playing opportunities. Why stop playing the negotiation game at the end of this course? In your future negotiations, the preparation team can take the roles of the counterparties in addition to their own real roles. As your team members represent the other sides, you will:

- Learn how the other side thinks;
- Gain understanding of their interests;
- Identify matching interests;
- Identify conflicting interests.

Simulating and modelling the negotiation will help you communicate with the counterparties and help you discover how to create and claim value with them.

This practice and discovery approach is sometimes called *war gaming*.

### Red team vs blue team

Organizations facing high stakes negotiations sometimes make a team for each side, for example Red and Blue teams. The Red teams will play the roles of other organizations or individuals in the negotiation with Blue taking the “home” role. All teams work without contacting each other for an agreed period of time (days or weeks) to research interests, strategies, tactics, and issues. When the teams meet again, they will behave as in a real negotiation presenting offers and counteroffers, proposing solutions to problems, and distributing resources as they see necessary.

#### **CASE 8.3: WAR GAMING EXAMPLE**

Komsel, Inc. and Singcell, Pty. plan a difficult negotiation ... they have many common interests; however, resources are very limited. Komsel decides to conduct a war game in advance hoping to identify the probable limits of Singcell in order to present their own ideas without unnecessary conflict.

Komsel therefore selects staff members for a Red Team that will play the role of Singcell in a mock encounter. The Blue Team includes the Komsel staff who will go into real negotiations with Singcell a few weeks later.

**TABLE 8.2** War gaming sheet, Komtsel's Red Team representing Singcell

<i>Red Team Members</i>	<i>Staff member from Komtsel assigned to understand that role</i>	<i>Interests</i>	<i>Comments</i>
CFO			
Legal Counsel			
Senior Engineer			
Other team member			

Some organizations will go so far as to hire actors who look and behave like the real counterparties on the other negotiating teams.

Write down the advantages you see in a Red Team vs Blue Team war gaming practice:

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Write down the disadvantages you see:

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### **Additional benefit – greater creativity**

When the participants in a war gaming exercise include some of the actual negotiators, the war game can be used to explore broad possibilities. Dr. Larry Susskind (2013), writes that it becomes possible to consider “a range of possible options that the parties might never discover under normal circumstances”. The actual negotiation, if it is very tense, may not allow the negotiators to discuss options that would bring criticism from back table observers. However, putting the issues into an unofficial war game situation may provide the freedom to bring up, and seriously discuss, solutions that would otherwise be taboo. The advantage is that additional solutions get consideration and may be put into play in the real negotiations that follow.

### **Additional benefit – intuitive thinking**

War gaming creates knowledge that is not easy to pass along and explain – we gain negotiation skills best through years of experience and interaction with highly skilled coworkers. This kind of knowledge, tacit knowledge, does not develop quickly or independently (Polanyi, 1966; Nonaka and Takeuchi, 1995). However, time is a resource which may be in short supply. Even if we have years available, it may not be possible to gather suitable experience unless there are numerous challenging negotiations annually. Lastly, each major negotiation

is likely to be unique, so how can we develop so much deeply intuitive knowledge quickly enough?

Share the knowledge and experiences gained from the simulated negotiation through in depth communication among the assembled team members. Through communicating, maximize the communication and reflection that leads to tacit knowledge in the individuals and in the team as a whole. Conducting the negotiation more than one time will increase the gain of experience and uncover various possibilities to create and claim value.

The war gaming approach will help you and your team to develop the deep, unspoken and intuitive knowledge that will lead you and your staff to quick and sure action at the real event.

### ***Section summary***

Simulating a negotiation with your own staff playing the counterparties will help with understanding the possible interests and solutions. Further, you may improve team performance in speed and mutual understanding.

### **Financial modelling**

When negotiating, make use of financial projections supported by spreadsheets and financial modelling software. These can include spreadsheets that you develop or models used in your organization. Oracle's CrystalBall software is a widely used general purpose package of financial models which can be used to create financial projections. DecisionShare software from Integratto is particularly useful for assessing uncertain numbers such as the level of sales, costs, or profits associated with a product or service. Without knowing the exact number of units that will be sold, profits and costs are similarly hard to establish. Additionally, DecisionShare helps to analyze, display, and rank the importance and sensitivity of elements in a complex negotiation. For example, the software might reveal that a feature such as cost or estimates of sales or price point is of greatest impact. The parties can then agree how to resolve the issue before it becomes a block to the negotiation.

In addition to the tools mentioned, a variety of calculators and financial tools can be found on websites for free use. One of these is Spliddit ([www.spliddit.org](http://www.spliddit.org)). Spliddit helps users to divide a group of items that are of unequal value and which the individuals may value differently. For example, if three siblings inherit a house, a cat, a car, and an old diamond ring. They can turn these things into cash, but then the objects will be lost ... and of course the cat has no cash value. With Spliddit, the parties attach a number from 0 to 1,000 to

each item to show their *feeling* about its value. Spliddit then calculates the fairest division of the objects based on personal evaluations.

### ***Section summary***

When negotiation requires prediction of uncertain financial numbers, use software tools to simulate. Then choose the actions that will have the best results.

# 9

## WHAT KIND OF NEGOTIATOR

... are you? ... are they?

### How do you resolve disputes?

The Thomas-Kilmann Conflict Mode model is widely used to describe how conflict is resolved. The model compares how assertive a party is to how cooperative a party is regarding any issue. The model can be used to judge your own approach on any one issue or the approach by a counterparty to an issue.

The model in Figure 9.1 is very similar to the one presented in Figure 1.6 in Chapter 1. The key difference is that this one helps you to understand individual styles (yours and others') as you plan your negotiation.

The concepts in the model have the following meaning:

Competing means: taking a distributive, win-lose approach without joint wins;

Avoiding means: delaying or never discussing an issue;

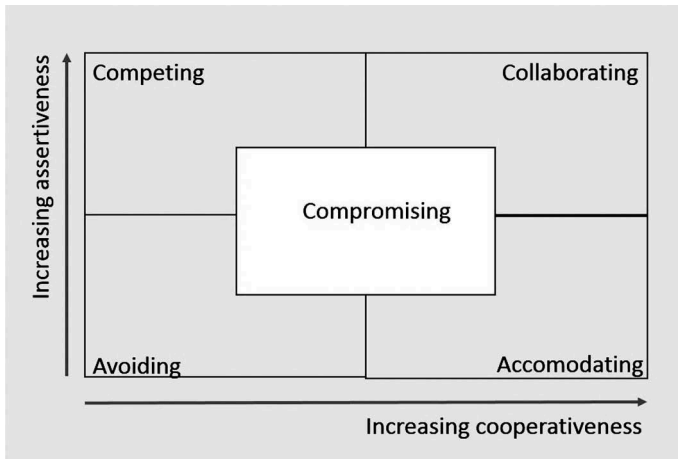
Accommodating means: accepting proposals of the other parties with little or no change;

Compromising means: sharing some benefits and disadvantages among the parties;

Collaborating means: working together on solutions and plans.

Note that Collaborating falls short of creating “synergy” as discussed in Chapter 3, in the section on Principle Based Negotiation. Synergy means that completely new joint plans and value are created together.

Of course, your choices based on Figure 9.1 will change depending on the issue and the context around the issue. However, you should be able to identify and understand your general preferences and the preferences of your counterparties.



**FIGURE 9.1** Thomas-Kilmann Conflict Mode Model

Source: <http://kilmanniagnostics.com>

## Emotional style

Each person has an emotional style. Some are more relaxed, warm, insistent, empathic, introverted, or extroverted. Knowing more about yourself, your team, and your counterparties will help you adjust to their style and improve communication.

Use the quiz below from Leigh Thompson's book, *The Mind and Heart of the Negotiator*, to learn more about your emotional style. In the quiz below, "R" means "Rational", "P" means "Positive" and "N" means "Negative". When you answer the questions of the quiz, try to think about one of the areas of your life in which you negotiate, for example family, work, clubs, associations and so on. Because our relationships are not the same in these different areas, you may get different results for each area. You might find that your style is quite different at home and at work! Think about how you really negotiate, not about how you would like to negotiate ideally.

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### Emotional Style Questionnaire

1. In a negotiation situation it is best to "keep cool".
  2. I believe that in negotiations, you can have more success by being pleasant than by being unpleasant.
  3. It is important to me that I remain in control in a negotiation.
- 

(Continued)

(Cont.)

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4. Establishing a positive sense of rapport with the other party is key to effective negotiation.
5. I am good at displaying emotions in negotiation to get what I want.
6. Emotions are the downfall of effective negotiation.
7. I definitely believe that I must emphasize what I think are problems in order to get improvements in many negotiation situations.
8. If you are nice in negotiations you can get more than if you are cold or neutral.
9. In negotiations you have to fight the other party if they fight you.
10. I honestly think better when I am in a good mood.
11. I would never want the other party to know how I really felt in a negotiation.
12. I believe that in negotiations, you can have more success by being direct and tough.
13. I have used emotion to manipulate others in negotiations.
14. I believe that good moods are definitely contagious.
15. It is very important to make a very positive first impression when negotiating.
16. The downfall of many negotiators is that they lose personal control in a negotiation.
17. It is best to keep your face from showing emotion in negotiations.
18. It is very important to get the other person to respect you when negotiating.
19. I definitely want to leave the negotiation with the other party feeling good.
20. If the other party gets emotional during the negotiation, you can use it to your advantage.
21. I believe that it is important to have similar thinking and feelings as the other party.
22. It is important to demonstrate resolve in a negotiation.
23. If I sensed that I was not under control, I would call a temporary halt to the negotiation.
24. I would not hesitate to make a threat in a negotiation situation if I felt that the other party would believe it.

### Scoring Yourself

Computing your “R” score: Look at items #1, #3, #6, #11, #16, #17, #20, #23. Give yourself one point for every “true” answer and subtract one point for every “false” answer. Then combine your scores for your R score (rational).

Computing your “P” score: Look at items #2, #4, #8, #10, #14, #15, #19, #21. Give yourself one point for every “true” answer and subtract one point for every “false” answer. Then combine your scores for your P score (positive).

Computing your “N” score: Look at items #5, #7, #9, #12, #13, #18, #22, #24. Give yourself one point for every “true” answer and subtract one point for every “false” answer. Then combine your scores for your N score (negative).

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Adapted and used with permission, Thompson (2012), p 117

Your R score: \_\_\_\_\_ Your P score: \_\_\_\_\_ Your N score: \_\_\_\_\_

Based on your score and your preferences, you can choose to continue without change, or to adjust your style.

**TABLE 9.1** How to handle others' emotional styles

<i>Other party →</i> You ↓	<i>Rational</i>	<i>Positive</i>	<i>Negative</i>
Rational	You can work together well.	You can work well with this party or manipulate their desire to maintain good relationship by gaining concessions from them.	If you avoid direct conflict, you may be able to work well with a negative party by showing the benefits they gain in cooperating with you.
Positive	You can work well with this party by cooperating with their desire for process and transparency. Do not let them gain concessions playing on your preference for good relationship.	You can work together well, but do not let your strong positive feelings get out of control or come into conflict. Over optimism and loss of focus are risks.	Your positive nature may make the negative party more negative. Try to restrain your positive but continue to look for ways to cooperate. Be careful not to allow the negative party to provoke your positive thinking into anger
Negative	You can use your preference to compete and win with rational parties, but competing too hard may cause them to walk away or to minimize the total gains in favour of more productive partners and projects.	You may use the positive person's desire to have a good relationship to your benefit, trading relationship for concrete concessions.	Don't increase the competitive win/lose feeling which can lead to unprofitable conflict. Instead, work together to show the benefits and problems in a clear way that allows all parties to gain some victories.

Rational – preference for less emotional content, preference for more logic.

Positive – preference for relationship.

Negative – preference for competition and winning.

After you have learned about yourself and your own way of doing things, you can think about how to manage coworkers or counterparties. Each will have their own style; if you can recognize it, you may be able to work with them more comfortably and successfully. Table 9.1 will help you select the right approach for different types.

## Emotional intelligence

Emotional Intelligence (EQ or Emotional IQ) is the ability to correctly identify and understand the feelings of others. Knowing those feelings makes it more possible to find solutions that your negotiation partners will accept.



To learn more about EQ, take an online quiz like the one at [www.ihhp.com/free-eq-quiz/](http://www.ihhp.com/free-eq-quiz/) or [http://greatergood.berkeley.edu/ei\\_quiz/](http://greatergood.berkeley.edu/ei_quiz/)

You can learn more about personalities in order to evaluate yourself, your team members and the other negotiating parties using the Five Factor model, the Myers Briggs Type Inventory (MBTI) or other approaches.

## Comparing

It is possible to compare individuals based on their styles. The chart in Figure 9.2, for example, compares two people based on their styles including Rational, Negative, Positive, Assertive, and EQ.

To create a radar map like the one in Figure 9.2, measure the five characteristics broadly and simply as high, medium, and low with scores of three, two, and one respectively.

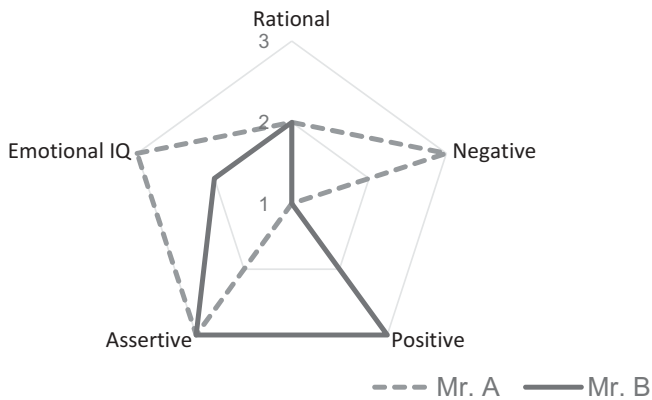


FIGURE 9.2 Personal styles compared

The advantages of comparing individuals are explained in the text box below.

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Knowing the style of counterparties will help you know what to expect from them.

- Rational parties may avoid showing emotions and may react poorly to displays of emotion.
  - Negative parties may manipulate by displaying emotions and may escalate emotions that they experience from others.
  - Positive parties may seek to build relationship and be sensitive to positive emotions.
-

(Cont.)

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Knowing the style of counterparties will help you to adjust to them.

- Rational parties may react well to proposals based on logic and fairness.
- Negative parties may react well to proposals in which they perceive extra benefit, a win, for themselves.
- Positive parties may react well to proposals that show improvements in relationships.

Knowing the style of counterparties will help you to manage them.

- Rational parties may be managed by showing logical steps and conclusions.
  - Negative parties may be managed by avoiding a competitive spiral.
  - Positive parties may be managed by including the value of relationship in offers.
- 

*Source:* Thompson (2012), Chapter 5

## **Assertive**

Assertive teammates may reinforce each other's assertiveness. Weakly assertive individuals may find that together they are more effective at putting their ideas into the conversation. On the other hand, strongly assertive teammates may become overpowering, smothering ideas that could come from other parties.

### ***Section summary***

Learn about yourself and your counterparties in order to best manage your approaches and the behaviours of the counterparties.

## ***Cognitive bias***

Understanding yourself as a negotiator also means you must understand how you think. The term "cognitive bias" means influences on thinking that can lead to errors. These errors are important to understand and avoid because they may lead to poor decision making. There are many kinds of cognitive bias; some that are of interest to negotiators are described in Table 9.2.

## **Example of framing**

A small tech company, Zing Inc., is entering negotiations with a large, well known globalized electronics maker, Pineapple Corp. Compare the framing in Table 9.3.

**TABLE 9.2** Types and impacts of cognitive bias

<i>Type of bias</i>	<i>Explanation</i>	<i>Negotiation impact (examples)</i>
Anchoring	Starting with a high sale price or low purchase price can create a bias that shifts the entire price discussion to move within a limited range.	Anchoring is effective if the other parties are not familiar with the concept and do not re-anchor. If another party anchors far from your target, simply re-anchor in the opposite direction in order to neutralize their anchor.
Confirmation/ Expectation bias	Interpreting data based on what you expect it to be, for example expecting winter to be cold and wearing a coat even on a warm day.	Thinking that the other sides are friendly and not reacting appropriately when they show unfriendly behaviours.
Emotional bias	Sympathy or distaste for a person, team or topic may impact decisions.	Negotiators may make agreements that do not optimize gains or cooperation.
Framing	Overall presentation of an issue or idea (i.e. positive/negative; urgent/non-urgent; important/less important).	Expressing a problem as “a chance to work together on solutions” is much more positive than presenting it as a difficulty. Research (Neale and Bazerman, 1985) shows that positive framing leads to higher mutual gains than negative framing.
Law of Small Numbers (representativeness)	A small sample is inappropriately interpreted as widely true (Kahnemann and Tversky, 1982).	A negotiator must insist on high quality data (i.e. new, clearly explained, detailed and not aggregated) and must interpret that data carefully. Skills in statistics are appropriate and negotiators should take the time, even if inconvenient, to understand data.
Optimism/ Overconfidence	Expecting to gain more than is likely. Research (Neale and Bazerman, 1985) shows that negotiators who expect to gain are less likely to make concessions and make agreements.	Negotiators may feel dissatisfaction despite a good agreement. Raising the expectations of the back table unreasonably.
Prejudice	Failing to take new information into account because of existing ideas about the subject.	Rejecting the solutions proposed by certain people because your culture expects those people to have poor business thinking.
Undervaluing Bias	Concessions are not evaluated accurately, instead they are evaluated lower than their real worth.	Because concessions are often undervalued by the receiving party, it is useful to make numerous small concessions rather than a single one.

**TABLE 9.2** (Cont.)

<i>Type of bias</i>	<i>Explanation</i>	<i>Negotiation impact (examples)</i>
Vivid Information Bias	Responding too strongly to data that are striking (Nisbitt and Ross, 1980). Example: we may be afraid of flying because air accidents are front page news involving large numbers of people. In fact, however, air travel is much safer than road travel by most measures.	Skilled negotiators must not over-value shocking or surprising points of information.

**TABLE 9.3** Framing and re-framing

<i>Version 1</i>	<i>Version 2</i>
Thank you so much for taking your time to consider our xZhei technology. We hope you will find it suitable for your projects!	So, I understand you are interested in our xZhei technology.
Version 1 creates a mindset that the large company is doing the small one a favour.	Version 2 creates a mindset that the small company holds something that the large company wants.

### ***Section summary***

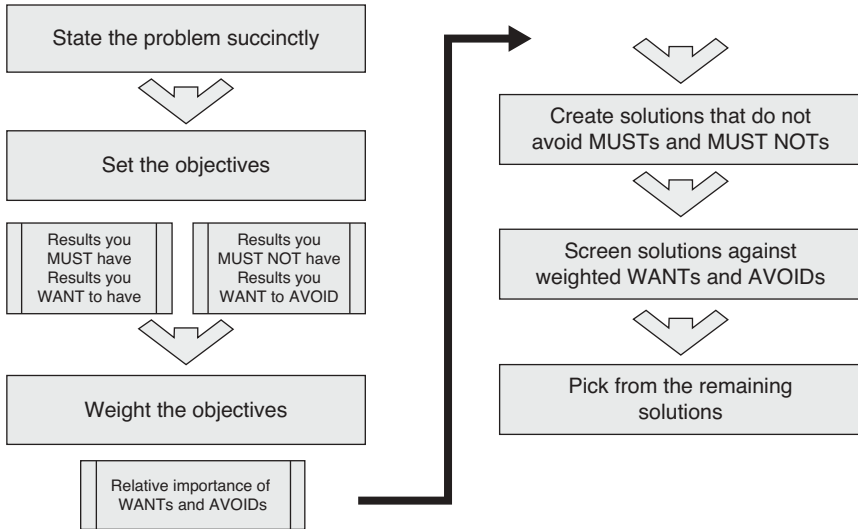
Good business thinking is not always strictly logical and emotionless. However, try to identify and avoid bias in your thinking that could lead to mistakes.

### ***Bias and decision making***

The ideal decision-making process is one that is conducted in multiple steps without time pressure by experienced people. When time and resources are limited, the process is often compressed or shortened with poor decision making as a result. Even under the best conditions, the decision makers can fall into cognitive bias.

### **Kepner-Tregoe decision-making process**

This widely used process was first described in the seminal book *The New Rational Manager*. The “rational process” the authors propose follows the four



**FIGURE 9.3** Steps in Kepner-Tregoe model

phases of situational appraisal; problem analysis; decision analysis; and potential problem analysis (Kepner and Tregoe, 1997).

Those steps include stating the decision to be made, developing objectives on a “must” versus “must not” basis as well as a “want” versus “avoid” basis, weighting the wanted results, creating alternative solutions, and screening the alternatives to arrive at a set of final best possible choices (Parker and Mosely, 2008). It is important to understand that this model does not start with proposing solutions and trying to pick the best one – that approach may lead to time wasting efforts that do not take the desired outcomes into consideration. Some versions of the Kepner-Tregoe model start with appraising the situation. Starting at the situation level, identify needs surrounding the problem, not just the immediate needs.

The steps might appear as in Figure 9.3.

Plus and minus of Kepner-Tregoe model

- + Attempts to clearly identify the problem to be handled;
- + Includes situational information around the problem;
- + Clarifies objectives into must/must not and want/avoid;
- + Weights the possible want and avoid items;
- + Includes a step to clearly maintain Must and Must Not items;
- + Uses a screening process to avoid a poor choice.

However:

- Starts with the situation and problem rather than the broader environment;
- Fails to address bias as a discrete step or parallel process;
- Fails to analyze stakeholder needs;
- Starting with stating the problem allows a framing bias to enter at the start of the process;
- There are no repeated checks for identifying and managing bias;
- Has no process for handling the intuitive judgments of high level experts.

**TABLE 9.4** Improved decision-making process and bias

<i>Process</i>	<i>Bias</i>
Consider the biases you and your team may have → Review the stakeholders and their needs; review the broad environment → Identify the biases of the decision makers and problem solvers → Identify the problem → Make an intuitive judgment and set it aside → Gather info → Analyze the problem and solution parameters → Evaluate for bias → Create solutions → Evaluate for bias → Predict results of solutions → Compare solutions and your intuitive judgment → Select best → Evaluate for bias → Implement best solution → Evaluate results → Adjust the decision or implementation based on the evaluation.	Many kinds of bias can enter the process at any stage. Therefore review and consideration of bias should be conducted multiple times, even constantly, throughout the process. Bias checking can include self identification of biases, evaluation by an outside expert or team, increasing team diversity, and formal protocols for checking and handling biases.

Note that the process described above allows for *intuition*. Take this step early to improve your intuitive abilities and to capture the input of team members, especially those with lots of experience. Very experienced people are often able to correctly decide about complex situations quickly because of their years of modelling, practice, and observation (Klein, 2011). Writing down the intuitive solutions and comparing them to more deliberate solutions will:

- a) Identify situations that are particularly difficult, and which need more work; and
- b) Build up the skills of less experienced staff members.

The process described above may have good results. In a business negotiation the process can be done by one side or jointly with other sides if the relationship has developed strongly. Mutual problem solving will lead to mutual satisfaction and mutual gains. However, time is not always available for a slow and careful decision-making process.

### High pressure high speed process for negotiators

Negotiators in the middle of interacting with counterparties may feel high pressure to act and decide quickly regarding complex issues and solutions. The pressure may come from their back table, the counterparties, external sources, or even their own feelings about the negotiation. In situations like this, the negotiators may shorten the process. Below is one way to manage a shortened process. Note that this shorter process can only be successful if the negotiators have identified the problem and have prepared alternative solutions, at least partly, in advance. It is important for the negotiators to resist time pressure and evaluate offers slowly and thoroughly. To manage a short, fast decision-making process, it is best if negotiators have well organized information about all interests and issues. Also, they can prepare a checklist of their own most likely biases.

- Compare offer to alternatives prepared in advance →
- Review for bias →
- Consider needs of stakeholders and select best alternative →
- Discuss amendments internally and with counterparties →
- Review for bias →
- Consider whether you would agree if various biases were in place →
- Accept or refine →
- Agree to implementation but insisting on options to refine or change →

In the ideal process presented earlier, careful decision makers review for bias throughout all the steps. In the shortened practical process, the negotiators should have specific steps to consider bias. In this step, they can identify bias and propose changes to the solution, or reject it completely, in order to avoid a poor decision. The shortened version also requires negotiators to have some alternative scenarios prepared in advance; do your homework!

### *Section summary*

Look for cognitive bias in your ideas and try to avoid bad decisions based on these errors. Practise your decision-making process with your team.

## **Teamwork**

On a soccer team, there are players who specialize in defending or attacking; they take positions like goalkeeper, striker, and so on. However, even specialized players must always defend and attack as necessary – the positions and duties overlap. A negotiation team can work similarly. Some team members can specialize regarding certain issues, but members in any position should be able to support each other in practical ways.

Unlike soccer, small teams are generally best in negotiation unless there are many very complex topics. Generally, a negotiation team should have one or two specialists or technical people, a knowledgeable generalist, and a decision maker (usually a manager authorized to make certain decisions). The actions of the team members must overlap as they support each other. The team may have many members, but they do not all have to go to the negotiation table.

Similarly, the members of a negotiation team work together by:

- a) having special positions, and
- b) supporting each other in all the team's positions.

Some positions may not be in frequent contact with the rest of the team when it is interacting with other parties. For example, Final Decision Makers, Liaisons, and Champions may not interact with the other sides and may not observe the interaction. The following suggested positions are for teams (Baber, 2018b).

Leader:

- Agrees agenda,
- Keeps agenda on track
- Acts to resolve or avoid deadlock
- Agrees to final proposal
- Supports specialists when they are leading the conversation
- Maintains alignment of the talks and outcomes with the goals of the Final Decision Makers

Team Member:

- May be specialists or generalists
- Specialists usually lead the conversation when those special topics are in discussion
- Agrees to a specific point when criteria are met (or signals the leader to agree)
- Supports leader and other team members when they are leading the conversation
- Helps with analysis and decision making during interactions and in private sessions with the team



Observer:

- Watches the interaction and gains an overview of the progress, gains, and errors of the team; may not necessarily speak and interact with counterparties
- Observes the personalities and style of the counterparties
- Evaluates the skills and abilities of the members
- Advises and coaches the team after sessions

Final Decision Maker

- Makes the final decision to accept or reject the negotiated agreement
- This person or group may be part of the negotiation team at the table, especially if the organization is small or if the negotiation is strategically important

Liaison/Champion:

- Communicates the progress and needs of the team to higher management
- This position is more useful when the team leader lacks time or organizational standing to communicate well with higher management
- A champion additionally promotes the team's work at the level of higher management to ensure that the necessary resources are available for the team's success

Other supporters:

- Undertake tasks that help the team such as conducting research or answering technical questions

Third party:

- The third party intervenes (invited or assigned) to help negotiations that are difficult, deadlocked, very complex, or which otherwise require support. The third party can be a mediator, facilitator, arbitrator, judge or some informal combination of these. The third party can also be a group or panel

The team positions identified above do not necessarily have to be separate people. One person might take more than one of those positions.

It is possible to have a successful team that has no positions and all members are generalists. A team of that sort usually has been working together for a long time developing experience in cooperation and learning how to function smoothly. As a result it may be able to delegate its tasks without a leader or specialists.

Q: What does it mean to support other team members?

A: It means you must carefully follow the talking and your team's overall plan. If you notice a problem, an opportunity, a mistake, new information, etc. you need to communicate it to your team members. You can do this by:

- Silently writing a brief note and passing it to other team members;
- Quietly and briefly speaking to a team member;
- Directly speaking to the counterparty about it.

This kind of communication is called supportive interaction (Vuorela, 2005). Vuorela gives these examples:

- “The sellers ensure that all their arguments are covered with the help of teamwork, with different members of the team contributing to the on-going discussion at different times.”
- “They also take turns at times repeating an argument a co-team member put forth earlier, and sometimes this seems enough to convince the buyers of their argument.”

Q: Is teamwork good for getting all the arguments and opinions out openly?

A: Yes. “Teamwork is a useful tool in covering the ‘full front’ when pursuing an argument with every member of the sales team bringing forth a different angle of the argument” (Vuorela, 2005).

For example, if the conversation moves to another topic before all the key points have been discussed, a team member can carefully interrupt and return to the unfinished topic. Teams that have members who are sceptical or disruptive of the agreement gain the benefit of dealing with hard challenges. These challenges may help the team avoid errors in the agreement.

Q: Is it OK to talk with your team members during a negotiation?

A: Generally, you should use some internal talk but avoid talking too much because it will distract others. You can put in a word or brief comment or question, if your team is used to this behaviour. Also, you can talk with your teammates loudly and clearly in a way that the counterparties can join. However, internal conferences with long whispering are generally poor etiquette. If you need a conference with your team, politely ask the other side to give you a few minutes of privacy, or propose a general break for refreshments. Use the break time to coordinate with your teammates.

Using note paper or tablet devices to communicate internally is effective, and not very distracting to teammates and counterparties. Be sure that your teammates can comfortably use such methods by practising before trying it at the negotiating table.

**TABLE 9.5** Preferred team size and composition

<i>Team A includes</i>	<i>Team B includes</i>
2 engineers with appropriate specializations	1 engineer
1 marketing person	1 marketing manager
2 business managers	1 business manager
1 top level manager (CEO, COO, GM or other)	
1 notes taker	
1 finance person	
1 human resources person	

Q: What is “team building”?

A: It means becoming good at working together. This happens by practising and discussing the strategies and details together in depth. A team leader needs strong listening skills in order to understand the individual members and identify the skills and strengths of the team and attempt to make weak areas stronger. At the same time the team leader needs to understand the goals of the individuals in order to align them with the goals of the team and the company. In addition to frequent meetings (one to one and as a group), having a casual meal or drinks together helps to build team function. If the team is created specifically for the negotiation, it may be possible to select compatible team members based on their personalities and skills.

Teams need frequent interaction and communication in order to share their knowledge effectively. The sharing of knowledge builds up tacit knowledge (Polyani, 1966; Nonaka and Takeuchi, 1995) and intuitive capacity. With time, teams can become very fast to act and decide. See the section on *War gaming* in Chapter 8 for comments on building the ability of a team to work well together.

Read the descriptions of the teams in Table 9.5 and decide with your partner which is best.

Please fill out the following:

I think Team \_\_\_\_ is best because ...

---



---



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### Cross-cultural teams

Teams that include people from various cultures face some challenges and enjoy some advantages.

Write some possible disadvantages here: \_\_\_\_\_

---



---

Write some possible advantages here: \_\_\_\_\_

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One of the most commonly identified difficulties with cross-cultural teams is the increased time for communication that is necessary to get the same results. Inexperienced managers may be surprised by lack of progress as deadlines approach. Frequent one-to-one communication may help to establish the relationships and mutual confidence necessary for a team to work well together.

Teams that are spread across many locations and which meet mainly online or by phone may experience difficulties such as time coordination, miscommunication, lack of clarity about tasks, delays, and so on. Consider the individual's personality and culture carefully, as some will appreciate additional communication and others will find it upsetting. Adjust the mixture of voice, email, and other media to suit the individuals.

When considering the members of a cross-cultural team, the team leader might aim to gather people with similar rank, previous positive cross-cultural experience, and reasonably strong skills in a common language.

### **Common language within the team**

The common tongue of business is usually English, though other languages are dominant such as Chinese in much of East Asia or French, Spanish, Turkish and Arabic in various regions. A team that includes native and non-native speakers will need the native speakers to improve their communication skills: less slang, slower speed, careful pronunciation, simple grammar choices, for example. At the same time, the non-native speakers may need to concentrate on their own pronunciation, choice of phrases, and ability to ask for clarification. Gestures and use of pauses, facial expression, and humour will also need adjustment – mutually, not by one group or person only. See Browaeys and Price's *Understanding Cross-Cultural Management* (2011) chapters 15–17 for additional useful comments on these topics.

### **Section summary**

Make sure your team understands the goals, the plan, and all the steps well.  
Practice together, prepare together, communicate frequently.

# 10

## AGREEMENTS

### **Robust agreements that can survive**

At the negotiating table, you should end with clear written agreements that your legal team will later finalize. You hope that these agreements will survive as intended.

How can you make an agreement that the other parties will not reconsider and perhaps break? How can you make a robust agreement even in a country that has a poor legal system? How can you get cooperation from people who are distracted with other projects? How can you make agreements that survive even if the other party is unreliable?

Your ideas: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

These approaches may help:

1. Include short term incentives to continue;
2. Plan actions in numerous steps or milestones that must be completed and accepted before continuing;
3. Plan for payment upon completion of milestones, or only partial payment before the milestone is completed;
4. Include negative outcomes to deter breaking off;
5. Share value fairly and communicate about that fairness;
6. Communicate the benefits and value creation of continuing;
7. Plan for “predictable surprises”;

8. Communicate to be sure the other sides understand the benefit of joint cooperation;
9. Create contingent agreements that change with the circumstances in a way that all sides consider fair;
10. Check the agreement for clauses that could be misinterpreted or misused and remove or improve them;
11. Communicate the high probability of additional successful work in the future, or, even better, agree to future projects that follow up on the current project (build the relationship, cement the relationship).

The last item on the list appeared in this textbook in the discussions in Chapter 2 about relationships, satisfaction and so on. It is part of all good negotiation thinking from start to finish. This is the easiest, most obvious, most effective way to increase the likelihood of cooperation and minimize the chance of breaking off or cheating.

The Consensus Building Institute (<http://cbuilding.org>) says, “Design nearly self enforcing agreements.” That means agreements that reward completion through incentives and make non-completion unappealing through punishments or clawbacks.

Dr. Larry Susskind of MIT suggests making agreements that help against “predictable” surprises. We know that even good ships sink, so we put lifeboats on them. Even good agreements may be harmed by a bad economy, changes in regulation, or other “surprises” that we can reasonably expect. Create agreements that can survive such surprises.

### **CASE 10.1: THE AGREEMENT THAT NEEDED RENEGOTIATION**

Starbucks, the café chain, found itself in an agreement it could not live with. After a strong start selling coffee products with Kraft in 1998, the environment changed. But there was no date for ending or reviewing the agreement. Starbucks felt in 2010 it was necessary bring the agreement to an end and offered Kraft cash to end the agreement. Kraft, however, refused. Thereafter Starbucks simply broke the agreement. Kraft insisted on arbitration which it won in 2013.

As noted in the Harvard Law School article at [bit.ly/1tyCV56](http://bit.ly/1tyCV56), the companies could have and should have agreed to a time or set of conditions for renegotiation. Writing these issues out would have provided an easy, and cheap, process for continuing, changing, or terminating the agreement.

In the end, both parties wasted money and decision-making time. Starbucks additionally had to pay all the profits it made on similar coffee products after breaking the agreement, over \$1 billion, to the Kraft spin-off company, Mondelez.

### Section summary

Design agreements that can survive changes in the environment. Well-designed agreements have clauses that explain what the parties will do in case of changes in the business environment.

### Control mechanisms often found in negotiated agreements

After the deal has been agreed and the discussion has finished, how can you be sure that the other sides will do as agreed? There are many ways to control the actions of negotiation parties after the talking has finished. These can be summarized as follows:

- Provide reasons (incentives) for the other sides to complete the work in a satisfactory way;
- Provide reasons (disincentives) for the other parties not to do incomplete, late or unsatisfactory work.

Some of the mechanisms for giving those incentives and disincentives are described below.

**Milestones:** Agreed intermediate points of completion. When each milestone is reached, payments are made, and new commitments are made. In a Joint Venture for manufacturing, milestones might include purchasing a factory site, installing utility services, constructing the building, installing equipment, and so on. Each major step is a milestone and an incentive to continue. The opposite would be an agreement that simply describes a single completed target.

Example:

Upon completion of the Working Prototype detailed in Section 3 of this agreement, Party A will pay Party B \$900,000 by bank transfer within 5 working days.

**Gates:** Points in a project when resources are re-allocated. An agreement with gates allows the parties to commit resources when necessary and suitable instead of committing major resources years in advance. The advantages include flexibility, and the ability to withdraw if a project fails.

Example:

After completion and acceptance of Phase 3 of the contract, the parties agree to discuss allocation of resources for Phase 5 including the following points ....

**Incentives:** Reasons, usually financial, for a party to perform above the minimum required in an agreement. For example, a party that completes a task a week in advance might receive 5% more in payment.

Example:

Completion of installation of the equipment more than 5 working days in advance of the schedule set out in Paragraph 7 of this contract will entitle party A to an additional payment of 5% by Party B within the payment terms of Paragraph 12 of this contract.

**Clawbacks:** Agreements to return part or all of a payment if a task is not done as required. These agreements protect one party if the other party does not perform well.

Example:

In agreement with Section 17a of this document, Party A will pay Party B \$10,000 in order to cover startup costs associated with the project. Should the target of \$80,000 gross sales not be reached by November 31st, Party A reserves the right to insist that Party B repay 75% of the \$10,000 startup costs paid by Party A, totaling \$7,500.

**Punishments and penalties:** The opposite of incentives. Typical punishments include receiving less payment if a task is completed late or with low quality.

Example:

Party A will receive only 90% of the sum in Section 7 (b) if the polishing work is not completed with 30 business days after the date of the agreement of this contract.

**Contingent clauses:** These are built on “if” structures.

Example:

Party A will conduct the E17 test procedure if Party B is unable to complete development of the substrate by December 17<sup>th</sup>, 2016.

**Renegotiation clauses:** If conditions change the parties can return to a negotiation instead of facing a drastically unbalanced business situation. In this way both parties can avoid situations that could be very destructive of their business, and avoid the need to unilaterally break the agreement.

Example:

The parties shall reconvene to discuss Section 3 of this Agreement should the price of gold decrease below \$1100 for longer than one week.



**Renewal clauses:** These allow the parties to continue the business if a major change to a product is made such as a new edition of software or a reference book.

Example:

In the case that Party A updates the Software Product, they will inform Party B in advance of the update. Party B will have the first opportunity to agree to continue or renegotiate the current agreement within five working days of receiving notification from Party A.

And of course ... don't agree to pay fully in advance!

### **Section summary**

Create good agreements that encourage success through fair sharing, incentives, communication, and high likelihood of future activities. Use control mechanisms that all sides agree are fair in order to encourage the parties to proactively solve problems and avoid difficulties.

### **When agreements don't survive: outside support, mediation, arbitration**

Negotiation does not always result in great agreements and satisfied partners.

If the agreements are poorly designed with gaps in understanding, no enforcement mechanisms, and no tools to repair a disagreement, the partners may want to renegotiate some or all of the agreement. That of course costs more time, money and energy ... so it is better to develop good agreements in the first place!

### **When to renegotiate**

You can expect your business partners to renegotiate an agreement if some or any of the following conditions exist:

- A drastic change in the economic environment occurs;
- Availability of resources changes;
- New regulation or legislation impacts the business activity;
- Political atmosphere changes;
- Disasters or wars occur;
- Supply or demand adjusts drastically;
- Supply chain collapses;
- Renegotiation is part of the culture or personality of a party;
- Relationship considerations change with respect to economic needs.

In some cultures and companies, renegotiation is considered to be a bad outcome or even a failure. In others however, renegotiation is seen as a way to expand the relationship and the business activity. Therefore, businesspeople should be willing to renegotiate in order to improve a business agreement and relationship. However, it is even better to write good agreements that need little renegotiation.

In any case, renegotiating part or all of an agreement is better than allowing the agreement to collapse. Recall the case of Starbucks and Kraft discussed previously. It would have been most sensible for Starbucks to have renegotiated before breaking the agreement. In fact, their failure to renegotiate and their failure to honour the agreement cost them more than the profits earned by breaking the agreement.

What if the parties cannot come to terms despite trying to renegotiate and the agreement collapses? It may be time to call in a third party that will act as a neutral helper.

### ***Process facilitators, mediators, and consultants***

Facilitators, mediators, and consultants are paid outsiders, usually negotiation professionals, hired to move negotiations along. Usually they are selected by mutual agreement among the negotiating parties because they are experienced, respected, and trained. They may regulate the flow of discussion like a traffic policeman regulates a busy intersection, they may ensure the negotiation process is fair, they may certify that information is correct by accessing confidential information on all sides. They usually do not deal with deeply substantive issues; however, they help the parties voice their views, actively listen to each other, and they can help the parties create solutions through use of problem solving techniques.

Mediation, facilitation, and consulting are generally done with careful regard for neutrality. Even though these professionals are normally hired by mutual agreement as neutral outsiders, they will emphasize their neutrality in various ways, for example, by sitting in the middle of the parties, not with one group or another. Additionally, they may offer confidential conversations with one or all sides in order to better understand the thinking, positions, and goals of the parties. A careful observer will understand that a mediator or facilitator can never be truly neutral or impartial – participation in the problems and parties is what makes a mediator effective.

A useful overview of mediation, including a general set of rules, can be found on the website of the World Intellectual Property Organization (WIPO) at [www.wipo.int/amc/en/mediation](http://www.wipo.int/amc/en/mediation).

### ***Buddhist mediation***

Buddhist mediators attempt to facilitate resolution of disputes by applying Buddhist practices such as:

- Awareness of self (mindfulness): Mindfulness refers to keeping overall awareness of multiple facts, positions, opinions etc. as objects in the mind,

including one's personal thoughts and feelings, as objects separate from the self or the situation. Mindfulness supports attention (Burke, 2010), analysis, comprehension, and the creative development of solutions (Ostafin and Kassman, 2012).

- Separation of self from the emotions and pressures and statements of the problem: Separation allows the individual not to become attached to positions, events, feelings, demands, personalities and so. No longer attached to a specific issue or detail, the parties can evaluate their goals and the goals of other parties more objectively.
- Awareness of interdependencies: Parties learn that the best solutions are ones that include the participation and satisfaction of all sides to the greatest extent possible. Without interdependent action and resolution, it is very like that one or more parties will reject the results immediately or later.
- Awareness of options for problem solving: As the above processes develop, the parties, including the mediator, become more easily able to create solutions that may have been perceived as impossible, taboo, or unattainable before. Even very unlikely proposals may provide elements that appear in the ultimate solution.

These practices are explained and taught to the mediation parties as necessary when the mediation begins and throughout the process.

While these approaches may be appropriate in areas with strongly Buddhist cultures, they may also be welcomed in North America and Europe. Some approaches that have been used among Buddhist mediators in the English speaking world include (Kramarae, 2013):

- Understanding-based mediation approach
- Insight Mediation Framework
- Nonviolent Communication (NVC) Framework
- Consensus Making Framework

### *Islamic mediation*

Mediation in the Islamic world is based on Sharia, the system of laws stemming from Koranic teaching. The term *wasata* is widely used and the process puts focus on gaining an outcome that will bring disputing parties to a peaceful resolution. The *wasata* process is intended to include comprehensiveness and flexibility (Bouheraoua, 2008) especially through the mediator's fairness, appropriate knowledge, and possible intervention. Furthermore, the *wasata* process involves the wider community whereas mediation and arbitration in the European and North American tradition are usually limited to the immediate participants (Pely, 2011). Ideally, the mediation includes reconciliation, *sulha*, in order to bring about a state in which the parties are expected to have no further disagreement or bad feeling. *Wasata* is not a process specifically for business, though business disputes may be managed by a *wasata-sulha* process.

### *External experts and fact-finders*

Experts and fact-finders may be asked to help when the negotiators lack the knowledge, time, or skill to investigate a question fully. In some cases, a third party may be brought in from another organization, a consulting company, a university, government, or a competitor, to provide information in a neutral and objective way. The negotiators expect that additional data and neutral interpretations will help them to find solutions – external experts and fact-finders are usually not included in the negotiation process and do not directly participate in problem solving. Ideally, fact-finding processes should happen early in the negotiation process, however in reality, they are often started when the parties have run into a block because they need more information.

### *Ombudsman*

The ombudsman (or ombudsperson) is found inside an organization and may be useful if your negotiation is internal to that organization (for example in the context of labour negotiations). Their job is to make sure that the process of negotiating an internal disagreement is fair. They seek to resolve problems early before they involve higher levels of management and more resources. The ombudsperson is relatively independent despite being inside the organization. The neutrality of the ombudsperson is usually not in question because they do not make binding decisions – they only help the parties to understand. The ombudsperson might however propose resolutions to the parties in a dispute as well as to upper level management in order to help the organization avoid similar problems in the future.

### ***Disputes: arbitration or court***

Arbitration is not a negotiation process, it is more similar to a court process. Arbitration is a formal process for resolving a dispute and binding the parties to solutions. After arbitration, the relationship between the parties may be too damaged to re-engage in new business projects. Therefore, it is better to try negotiation, mediation, and other options before starting arbitration.

Because arbitration is a formal process, it is more expensive than negotiation or mediation, though usually less expensive than a legal court.

1. The parties to arbitration agree in advance to accept the ruling and the solution of the arbitrator.
2. The parties agree to an arbitrator or a team of arbitrators that they view as neutral but qualified.
3. The parties and arbitrators agree to a process, usually with strict rules about presenting documents, arguments, and counter arguments.

4. The parties prepare and submit documents and summaries of their positions.
5. Usually there is a facilitated face-to-face verbal discussion.
6. After the discussion, often weeks or months later, the arbitrators will deliver a decision which is legally binding.
7. It may be necessary to complete a follow-up legal action in the other country to enforce the decision of arbitration court.

Arbitration and courts may have strict requirements about processes such as presentation of arguments, presentation of evidence, statements of experts, making of offers, and other actions. Participants must follow these processes precisely.

Arbitration tends to be less expensive, less complicated, and less risky than court. However the costs of arbitration and court may motivate the parties to return to negotiation. The parties in an arbitration or court process face a higher risk than they do in negotiation because there are fewer compromise positions and all or nothing win/lose situations are more likely. A careful risk analysis by the parties may motivate them to return to negotiation.

### ***Section summary***

When negotiations fail or become deadlocked, use alternative methods to restart the process. Agreeing through negotiation, however, will usually be the least formal and least expensive way to reach agreements.

### **Draft or binding agreements**

Draft agreements indicate intent and binding agreements are “in force” when signed. The parties should agree whether their agreement will be a draft document or a final, binding document. If it is a draft, the parties will usually have final versions completed by legal staff. On the other hand, a binding agreement can be made at the negotiating table if the parties wish. Negotiators who prefer detailed complex legal agreements may not feel comfortable with a binding agreement completed at the table. They will probably prefer to have a final version completed later by legal staff.

Draft agreements can be general or specific. Some individuals and some cultures will prefer more or less detailed documents. Generally speaking, the Anglo-American cultures prefer detailed agreements and negotiations. The written documents, draft or final, can be many pages in length. The advantages of a detailed document include greater clarity and therefore fewer issues that will need to be discussed, explained, or renegotiated later.

A detailed agreement might cover the following items or more (Table 10.1):

Other cultures, especially Latin, Pacific, and East Asian cultures, often prefer general agreements that show intent and broad commitment. These documents

**TABLE 10.1** Agreement components

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• Compliance	• Purpose
• Confidentiality	• Representations, Warranties and Covenants
• Contributions from all parties	• Risk, e.g. inflation risk, currency risk, political risk, etc.
• Damages	• Scheduling
• Dispute resolution	• Share of profits/Compensation
• Enforcement	• Tasks for implementation, obligations
• Exclusivity including sector, channel, territory	• Term (length of time the agreement will continue)
• Force majeure	• Termination
• Improved versions, new editions etc.	• Transfer of obligation
• Infringement	• Units of measurement
• Liability	• Waivers
• Organizational structure/ownership	
• Parties	
• Payment terms, i.e. in advance, upon completion, by milestone etc.	

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may be quite short, just a few pages. As an example, one of the authors' part time contract with a university in Japan filled barely two pages. A similar agreement with a university in Canada filled 16 pages!

This textbook however recommends detailed agreements in order to minimize opportunities for misunderstanding and dispute. Well-designed agreements can save time and cost over the long term.

Some agreement documents you might work with include:

### ***Memorandum of understanding (MOU) or letter of intent (LOI)***

An MOU or LOI is usually not written with high detail. It is usually not legally binding. The purpose of the document is to describe the spirit of a cooperative agreement and, broadly, how the cooperation will function. It should not detail the work or commitments of the parties.

### ***Contract***

A contract is highly structured and is binding once the legal representatives of the organizations have signed it.

A contract might contain the following sections as noted in Bradlow and Finkelstein (2013):

- Recitals: Identifies the companies and substance of the agreement.
- Definitions: Defines words, especially technical jargon used.
- Business Terms: Core issues of who, what, where, when, cost, etc.

- Representations and Warranties: Statements of fact such as “the factory at 33 Maple St. can support equipment weighing up to 2 tons per square meter.”
- Covenants and agreements: Generally these are promises to perform.
- Conditions: These include conditions that must be met, such as inspections, before the agreement comes into force.
- Indemnification: Liabilities from failure to perform the covenants and agreements.
- Miscellaneous: May include clauses about termination, renegotiation and so on.
- Attachments and schedules: These may include lists of equipment, facilities, staff, property or other materials important to the agreement.

### ***Reviewing an agreement***

You should review agreements carefully before signing. Look for:

- Wording that is very limiting or too vague;
- Wording that a bad actor could intentionally misinterpret;
- Third party roles that could confuse responsibility;
- Clear definitions of ideas and things;
- Reasonable rights;
- Hidden liabilities;
- Unbalanced benefits; and
- Schedules that might be too difficult to attain.

An additional check should be made from the point of view of a bad actor or “black hat” party that wants to abuse the agreement: look for ways to exploit wording or possibilities to gain more value than expected or intended.

If possible, have a legal expert review the document.

### ***Agreement text examples***

For examples of text (free or for fee) that can be used in agreements, please visit some of the following websites:

General:

[www.wipo.int/](http://www.wipo.int/)

[www.lawmart.com/](http://www.lawmart.com/)

[www.lawinsider.com](http://www.lawinsider.com)

Dispute resolution:

[www.jamsadr.com/](http://www.jamsadr.com/)

[www.iccwbo.org/](http://www.iccwbo.org/)

[www.huschblackwell.com](http://www.huschblackwell.com)

Confidentiality:

[www.bitlaw.com/forms/nda.html](http://www.bitlaw.com/forms/nda.html)

[www.cdr-news.com/](http://www.cdr-news.com/)

### ***Section summary***

Create agreements that cover details to the satisfaction of all parties. Agree to create draft agreements that are non-binding to allow time for review by legal professionals.



# 11

## REVIEW FROM A HIGH ALTITUDE

What is the overall thinking and approach, the *heart and mind* of negotiation we need to follow? Lax and Sebenius say “Think strategically, act opportunistically”. To do so, they suggest the following strategic approach:

- Assess setup barriers:
  - Thoroughly map all the parties, their interests, and their BATNAs.
  - Decide sequence and process.
- Assess barriers to agreement.
- Assess tactical and interpersonal barriers.
- Overcome these barriers by mapping backward from the target deal by making a 3D Strategy:
  - Set up the right negotiation content and goals.
  - Design value-creating possibilities.
  - Emphasize problem solving as a joint approach.

Adapted from *3D Negotiating*, Lax and Sebenius, 2006, p. 237

*Acting opportunistically* means being flexible and ready to change your ideas in order to get the best results.

Only effective preparation and focused action make the difference – and in our experience, the best preparation is mastering the principles of 3-D Negotiation.

Lax and Sebenius, 2006, p. 19

Your goal: “create and claim value for the long term”

Lax and Sebenius, 2006, p. 237

Another way of thinking about the overall goal and purpose of business negotiation is to think, “Let’s maximize value and solve problems and avoid failure.” Maximizing value means putting new value-creation before distribution of resources and rewards. Solving problems means creatively removing barriers to agreement and developing value-creating ideas. Avoiding failure means designing agreements that are workable, enforceable, and profitable.

## Lifecycle of negotiation

An overall negotiation process can be blocked into six phases (see Figure 11.1). Each phase has events and documents that show it has finished and that the next is underway. The process can come to an end at any point in a phase or at a phase boundary. The process can return to a previous phase, however it is not possible for the process to skip a phase. At the end of the fifth and sixth phases, it is possible for the process to restart with new topics and deals (Baber, 2018a).

The activities within the first five phases can be roughly broken down into processes as in Figure 11.2. These processes may repeat and cycle, but the overall movement is from left to right, from earliest beginnings of planning and research to evaluation and, sometimes, expansion and continued negotiation.

## Example of a negotiation through the phases

Table 11.1 refers to negotiations around the Ichthys offshore liquid natural gas project. The table refers to only one part of this complex of negotiations, namely the process of assembling the finances for the project. The project is located in the Indian Ocean, some 200 km from Perth, Australia. The agreement includes many shareholders, investments of \$20 billion, and is planned to continue for more than 40 years.

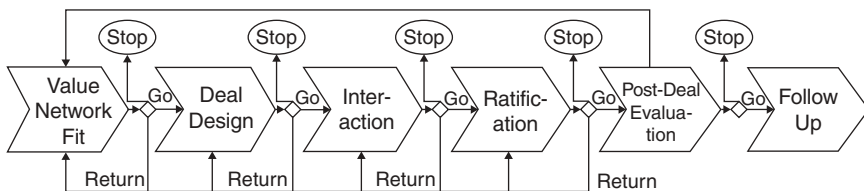


FIGURE 11.1 Macro phases of negotiation

Source: Baber, 2018a

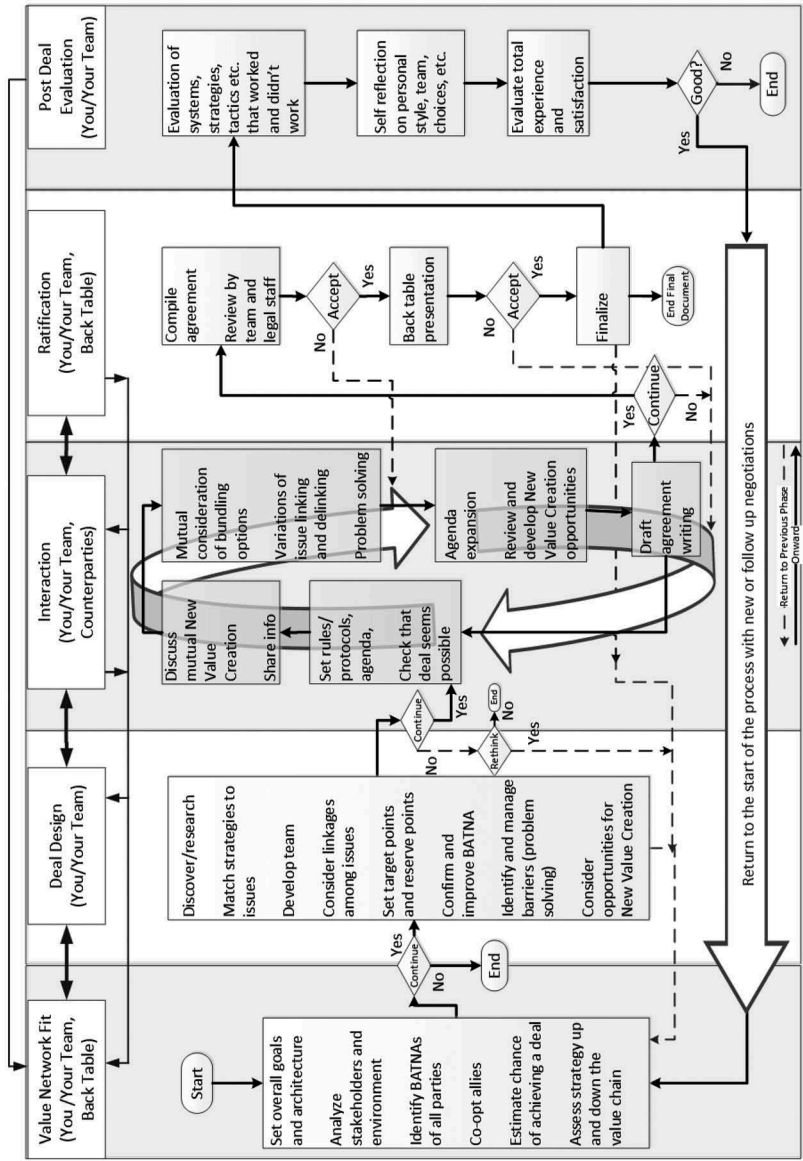


FIGURE 11.2 Negotiation lifecycle

**TABLE 11.1** Ichthys – highly complex negotiation

<i>Phase</i>	<i>Action(s)</i>	<i>Ichthys Offshore Natural Gas Project</i>
Value Network Fit Phase	Considered shareholders, equity shares, suppliers, actions of competitors, supply and demand forecasting, etc.	The parties considered which companies would provide major services and which would lead the project. Parties reported to be considering equity shares, Summer 2010 (Osaka Gas Journal, <a href="http://www.ogj.com/articles/2010/08/inpex-mulls-sale-of.html">www.ogj.com/articles/2010/08/inpex-mulls-sale-of.html</a> )
Deal Design Phase	Crafted various deals for them	Various deals and percentage investment and profit were considered. Groups formed and reformed. Tokyo Gas leads, Total, Inpex and others considered whether to take leading or supporting roles. Their ideas and proposals developed over time (see articles at <a href="https://www.ogj.com">https://www.ogj.com</a> ).
Interaction	Talked and jointly crafted agreements	Finally, one of the parties, INPEX, formally completed its internal Final Investment Decision, Jan. 2012. Partnerships considered, and agreed, sales of equity Summer, 2012 (Osaka Gas Journal, <a href="http://www.ogj.com/articles/2012/07/total-increases-stake-in-ichthys-lng-project.html">www.ogj.com/articles/2012/07/total-increases-stake-in-ichthys-lng-project.html</a> ) The parties developed the finance agreement included interactions with eight export credit agencies and 24 commercial banks leading up to the Project Finance Agreement (see INPEX Annual report 2013).
Ratification Phase	Executive decision makers agree (or disagree and cycle the document back to talks)	The legal counsels of the parties reviewed the Project Finance Agreement and, after agreeing to some changes, the CEOs and boards of those organizations ratified the agreement. Project Finance Agreement signed, Dec. 2012. (INPEX Annual report 2013)
Evaluation and Monitoring Phase	Enact, monitor, evaluate the negotiation and outcomes	Production begins in 2018; from this point forward, the parties will check that everyone is fulfilling their obligations and that the agreement is working as expected.

*(Continued)*

TABLE 11.1 (Cont.)

<i>Phase</i>	<i>Action(s)</i>	<i>Ichthys Offshore Natural Gas Project</i>
Follow-up Phase	Subsequent negotiations re suppliers, contractors, schedules etc.	Purchasing agreements, delivery contracts, contracts related to maintaining and improving delivery and production infrastructure need to be created. In addition to those B2B agreements, negotiations with local government and citizen groups take place. Agreements and renegotiations may be renegotiated and adjusted as regulation or economic environment evolve.

### Practical list of don'ts

At the end of our review of the negotiation process, we can come to a practical “do not” list:

- Do not rush.
- Do not be snowed under by data.
- Do not be too greedy.
- Do not harm others.
- Do not give something for nothing.
- Do not fail to learn.
- Do not fail to prepare.

### Do not rush

Push deadlines back with superiors, clients, partners, and other negotiating parties. Allow more time rather than less time in order to solve problems and create relationships that will survive fruitfully.

### Do not be snowed under by data

Do not allow large amounts of data to confuse you. Data is not useful until categorized and analyzed. Use careful decision-making processes and appropriate business analysis. Learn to categorize information so that you are not distracted by too much data.

### Do not be too greedy

Learn to capture a reasonable amount of value so that you do not damage other parties in the negotiation. A reasonable approach will cause your reputation as fair negotiator to develop.

**Do not harm others**

Never directly harm another party because your reputation will suffer. Worse, you may become a target for others trying to damage you and your business. Instead, learn to create satisfaction in all parties.

**Do not give something for nothing**

Giving something for nothing drains your resources. Gaining from your concessions means the gains must be of comparable value. The gains can be tangible (assets and resources) or intangible (relationship, reputation, brand, strategic position, etc.).

**Do not fail to learn**

Every negotiation, successful or unsuccessful, is a source of learning. Evaluate the negotiation in detail in the middle, shortly after completion of the negotiation, and again when the agreement is being executed.

**Do not fail to prepare**

There will be few successes in your career if you do not deeply know the details of the issues and the stakeholders related to it. Know the people, know the facts!

***Section summary***

An overall process starts with research and finishes with robust agreements. In between are many repeated steps of communicating, solving problems, and deciding. Each step is an opportunity to learn, create value, and find satisfaction among the participants.

# 12

## REFLECTION ON NEGOTIATION THEORY

This book aims to explain negotiation in practical ways to build up skills that students can put to immediate use. However, students and educators are welcome to consider the theory and academic understanding of negotiation behind our book. This chapter briefly presents the central theories behind negotiation.

Negotiation is based on two or more parties interacting in order to come to agreement. *The Theory of Cooperation and Competition* (Deutsch, 1973) says that the parties largely choose to cooperate or compete depending on the relative importance of the issues and the atmosphere around the discussion. The Dual Concern Theory (Pruitt and Rubin, 1986) compares the weight the negotiators assign to their interests and the interests of others. These theories contribute to the five strategy model discussed in this textbook.

Theory generally places negotiation within the field of conflict resolution as an activity around the resolution of problems that may play out in mediation, courtroom, or various kinds of talks. However, there are key points to recognize. Among these is that the participants in a negotiation have joined voluntarily. Participants in litigation, arbitration, etc. may or may not have joined voluntarily and disputes underlie these interactions.

### **Voluntariness**

The parties in negotiations may have compelling practical reasons to work together, but they can choose not to. Therefore, in negotiation, the parties are voluntarily working together. The opposite situation is generally true in court cases (litigation) where one or more parties have no choice about continuing or leaving. In negotiation, a party can leave if they feel there is a better choice than negotiating.

Because the parties are interacting willingly, negotiation means that the agreement has to be unanimous. If the parties do not all agree, there can be no

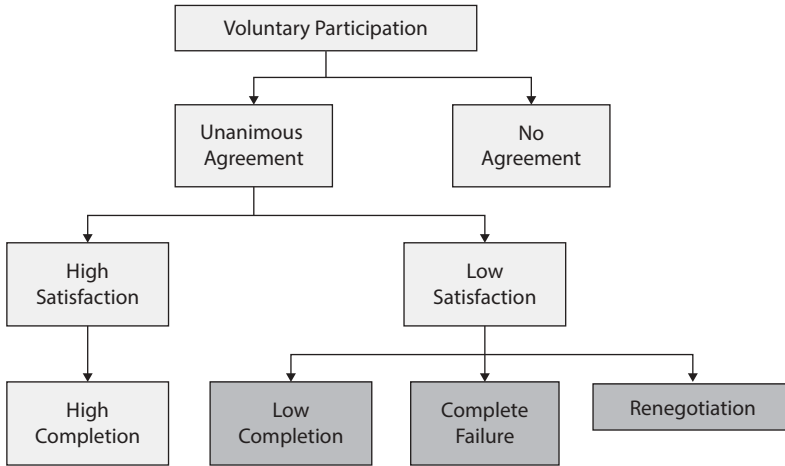


FIGURE 12.1 Negotiation outcomes

agreement. Of course, a unanimous agreement might not be completely satisfying to those parties. In that case a party might not do what the agreement requires – failure to execute the agreement means the negotiation was a partial or complete failure. Figure 12.1 shows how negotiation can lead to completion of agreements, or failure.

According to Figure 12.1, agreements that satisfy the parties, and even other stakeholders, are more fully implemented and have a higher rate of completion than agreements that do not satisfy the participants as well. The logical conclusion that this theory leads to, is that negotiators must work supportively and cooperatively with the other parties in order to get the best agreements. Nonetheless, some parties will emphasize their own gains and thereby decrease the satisfaction of the other side to the minimum point necessary for them to complete the agreement. If the satisfaction decreases further, however, they will not agree, or if they do, they will

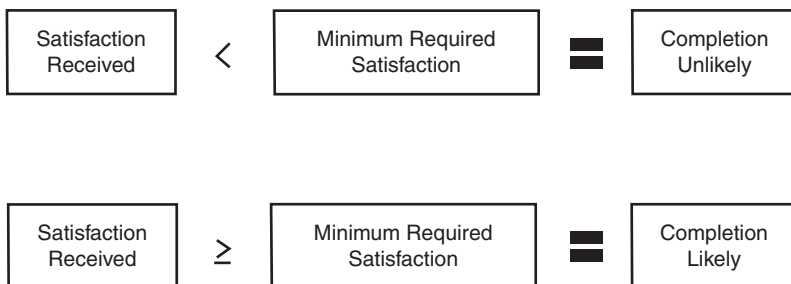


FIGURE 12.2 Satisfaction and completion



not fully complete the agreement without further negotiation, legal action or other steps. Figure 12.2 shows the relationship between satisfaction and completion.

Another key point is that in negotiations, there may or may not be a dispute. Thus, Raiffa (2002) places negotiations in the field of decision making. Negotiations, especially regarding commercial business, usually involve a deal, a mutually beneficial package of obligations, contributions, concessions, and goals. Negotiations that include third party mediators or facilitators may take place for the purpose of dispute resolution or deal creation.

## Utility

In order to understand solutions that increase or decrease satisfaction, negotiators must consider the relative utility of the issues they negotiate. Utility Theory (Fishburn, 1970) refers to the relative values that one or more parties place on things. At the basis of this theory is the belief that individuals can determine and rank the value of multiple things. For example, it may seem that \$10,000 has the same value for everyone because it can be used to purchase \$10,000 worth of goods or services. In Utility Theory, however, the parties have different ideas about the value of \$10,000. For a small organization or a person with little money it might mean the difference between success and bankruptcy. For a large organization, however, \$10,000 might have little impact on their planning or their profits. Because the parties have different values, they may come to convenient exchanges by coordinating what they value more or less. Therefore it is vital to understand the value you place on resources and issues as well as the values other parties place on issues and resources.

In order to understand the utility you attach to an issue, you must compare it to other issues: the value of something is understood in the context of the things around it. To help understand the relative utility values of multiple issues, negotiators may take the following two steps:

1. The total value of the issues to be discussed is set equal to 100.
2. The 100 value points are divided among the issues with important issues getting more.

For example, in a negotiation about time, money, and raw resources a party might assign more value to time, less to money, and much less to the resources, depending on what they need more urgently. The other parties' ideas might be similar, or quite different.

## Strategy

In negotiation, strategy refers to one of five overall approaches to a negotiation; Compromise, Collaborate, Accommodate, Compete, and Avoid. Negotiators choose a strategy based on two different feelings about issues. The first is their

evaluation about how important the issue is. The second is their judgment about how important the relationship to the other parties is. In negotiation, this is explained by Lewicki, Hiam and Olander (1996) as relationship versus substance. Additionally, strategy can be explained as conflict style by comparing the negotiator's strength of feelings about their own issues with the other parties' issues (Thomas and Kilmann, 1974). The five conflict styles are similar to the strategies discussed in negotiation.

Negotiators' evaluations and judgments, naturally, do not remain fixed throughout a negotiation. As parties communicate and learn, and as the environment changes, the understandings about the other parties (relationships) and the resources and issues (substance) change dynamically for better or worse. As a result, the choice of strategy is not fixed. Strategy, therefore, is not a fixed and limiting behaviour, it is a dynamic and evolving series of behaviour choices.

## Relationship

Relationships are built partly on the norm of reciprocity, a feedback loop that reinforces the positive or negative cycle of interactions. When parties aim to create win-win results, they are likely to develop a closer and more positive relationship. Generally, positive relationships lead to more information sharing and thus better problem solving as well as greater creation of mutual value, especially when the relationship matures into a "working relationship" (Pruitt and Carnevale, 1993). A positive cycle of relationship building typically leads to good relationships and these lead to better mutual outcomes for negotiators. Empathy, the ability to share the feelings of other parties, allows relationships to grow faster and stronger.

In integrative negotiations where both sides can optimize their utility, good relationships are usually beneficial to all parties. In distributive negotiations, however, where one party gains at the other's expense, a good relationship may result in greater loss as one side manipulates the other to exchange relationship for substance.

Thus, in order to protect oneself, relationships, empathy and impressions should be seen as something to be managed. Impressions, for example, can be managed to make a party seem more inviting to relationships or less vulnerable to exploitation.

## Relationship and negotiations across cultures

Good relationships can lead to good negotiation results (Halpert et al., 2010). Building relationship with members of other cultures requires additional skills and abilities. Cultural Intelligence (CQ) includes a combination of cognitive, behavioural, motivational, and metacognitive aspects (Ang et al., 2007). High CQ indicates ability to adjust cross-culturally including developing relationships with people in the target culture. In order to develop CQ, people can study and gain experiences. Learning depends partly on awareness, and greater awareness

means more ability to identify the differences that matter and the adjustments to behaviour, speech, and interaction that matter (Triandis, 2006). Thus awareness and motivation are foundational, but ongoing effort is needed to communicate with mentors, interculturally fluent people (Baber, 2012), experts, instructors, and individuals who can provide quick feedback, in order to become highly successful.

## Negotiation structure

Negotiations can be described as a process because they have a beginning and an end. A process can be separated into phases at the highest level, with each phase containing many aggregated activities. Phases that cover the entire lifecycle of a negotiation start with review of the strategic level value chain followed by planning of the deal and then by the main interactions among the parties. These three phases are followed by the ratification phase when any agreements are finalized and formalized. Finally, agreements are implemented, monitored, and the negotiation process and outputs are evaluated. In cases where the topics are relatively complex, for example international trade deals and large corporate mergers, there may be a follow-on phase in which subordinate agreements are negotiated or adjustments to the main agreement are renegotiated (Baber, 2018).

Theory generally suggests that the interaction among parties will include distributive and integrative moments or sections and some models place this near, in terms of time and process, the end of negotiation and close to the moment of agreement (Gulliver, 1979; Lax and Sebenius, 2006; Glenn and Susskind, 2010; Craver, 2012).

In this section it is also appropriate to note negotiation proposals that are not intended for completion. These are bad faith negotiations that may be smoke-screens to distract from other tasks or to gain time (Faure, 2012).

## Communication

E-Negotiation is associated with the communication performance and effectiveness of communication tools. The key theory to support the e-Negotiation is Media Capability Theory (Dennis, Fuller and Valacich, 2008) which is developed from the perspective of Task-Technology Fit (Goodhue and Thompson, 1995; Zigurs and Buckland, 1998). The media capability theory incorporates both technology and task characteristics to investigate the communication process that fits the use of tools to reach communication effectiveness.

The media capability theory links the media capabilities and communication processes that are fit to perform communication. First of all, the media capabilities feature the transmission and processing capabilities to associate with media synchronicity that enables the communicator to coordinate the use of tools and information. The media capabilities cover the features of “transmission velocity”, “parallelism”, “symbol sets”, “rehearsability”, and “reprocessability”. Secondly,

the communication processes differentiate information conveyance and information convergence to interact with media transmission and process capabilities to propose the fit of tools. For instance, the media transmission capability for communication conveyance enables communicators to provide new, diverse, and larger types of information. In contrast, the media processing capability for communication conveyance enables communicators to indicate retrospective events and deliberation. Moreover, the media transmission capability for communication convergence enables communicators to identify familiar, distilled, and smaller type of information. Yet, the media processing capability for communication convergence enables communicators to verify information, adjust to the given ideas, and negotiate the differences.

Moreover, there are interaction factors between the communicators in the process of negotiation, such as the familiarity between the negotiators, the training of utilizing technological communication tools, the past experience of using tools and between the negotiators and the social norms. The fit among media capabilities, communication processes and interaction factors would enable the negotiators to reach shared understanding and thereby deliver their tasks; such as the quality of outcome and the time efficiency.

### **Game theory and negotiating**

Game theory in negotiations rests on the notion of maximizing utility. The repeated form of the Prisoner's Dilemma "game" helps to explain how parties communicate even without verbally discussing and coordinating their moves. In Prisoner's Dilemma, players react to the moves of the other person. If the move is favourable, they should react with a positive move to continue and reinforce the flow of benefits. Returning a favourable move with a favourable move is referred to as cooperating. On the other hand, if one party delivers a move that hurts the other party, they should react with a similarly negative move; this is called defecting. Negotiators, according to this theory, constantly choose either to cooperate or to harm the other and maximize their own benefit.

Game theory also helps negotiators to determine payouts and with this knowledge they can choose to move rationally toward optimizing the gains for one or all parties.

# APPENDIX I

## Glossary

**3D Negotiation:** involves three phases of action: (1) what to do at the table; (2) designing the target agreement; (3) setup of the overall negotiation. Lax and Sebenius (2006) wrote a book called *3D Negotiation* which has been widely translated; check to find a copy in your language.

**Anchoring:** setting the expectations about cost and the general price range by making the first price offer. It is generally a good idea to make the first price offer based on sensible price research.

**Assertive:** strongly demanding.

**At the table:** formal negotiation time when the parties are talking. Imagine all parties sitting at a table, talking.

**Away from the table:** time and situations (breaks, recesses, meals, weekends, nights) when the parties are not formally negotiating.

**Bargaining chip:** a relatively unimportant concession that you plan to give in exchange for some concession. Sometimes these are called *sweeteners*.

**Bargaining/Bartering:** conceding low-priority items for concessions on items that are more important to you. Also called “logrolling” or making tradeoffs. This approach is practical with relatively simple issues and is often used to sweeten a proposal with concessions.

**Bottom line:** sometimes this phrase is used with the meaning of reserve price or point (see below).

**BATNA:** Best Alternative to a Negotiated Agreement (sometimes also called the “walk away”). BATNA is the result you would have if you did not negotiate. See Chapter 3.

**Claiming value:** trying to get the parts of a business arrangement that are most useful (and valuable) to you. See Chapter 1.

**Concession:** something that you give or receive, for example, a better price, a change of schedule, or a change of product that suits the other parties.

- Consensus:** agreement. Negotiators manage consensus within their team, with their back table, and ultimately with their counterparties.
- Counterpart(y):** a negotiator from the other side of the negotiating table.
- Creating value:** discovering new opportunities for value and profit. See Chapter 1.
- Deadlock:** a situation in which there is no progress and no agreement. The parties must break the deadlock or give up and follow their BATNA.
- Deal:** the package of issues in the negotiation. Also, the agreement.
- Deal/no-deal balance:** the thinking and decision making that go into agreeing or not agreeing; the considerations that lead negotiators to accept and offer or choose their BATNA.
- Deal breaker/show stopper:** an issue that must be resolved or it will cause the entire negotiation to fail. Obviously it is important to identify and manage these issues in advance of negotiations.
- Deceit:** providing information that is not true. This is almost always a bad idea. You may gain in the short term, but you may damage yourself in the long term.
- Delinkage:** separating an issue from other issues in the negotiation; delink if a particular issue threatens to ruin the negotiation, or if you can sensibly separate groups of issues from each other.
- Distributive negotiating:** negotiating the sharing or claiming of limited resources (such as time, money, products, etc.) in a win-lose approach.
- Empathy:** understanding for feelings of other parties.
- False concession:** pretending that a concession you *must* give or do not care about is a concession that you did not want to give. You can trade this “false” concession for something of value. Not recommended – when the other side learns that they had to fight for something they could have gotten without any question, the relationship may be damaged.
- FOTE:** Full Open Truthful Exchange. This means telling *everything* to the other sides. Parties tell the whole truth concealing nothing. This is sensible in negotiations where all sides have confidence in creating value jointly and sharing it reasonably. See POTE.
- Hardball tactics:** a variety of aggressive tactics such as threats and delays, and so on. Basically these are unprofessional and unsuitable for most business negotiation. However some businesses use hardball tactics to put pressure on the other party. Having a good BATNA will protect you from most hardball tactics. At the table, hardball tactics are best met with silence, or by resuming your normal questions.
- Integrative negotiating:** bringing together many issues in order to solve problems, maximize mutual gains, repackage and optimize, and make robust agreements.
- Interests:** things that a negotiator (person, team, organization) wants. These things can be tangible (money, buildings, equipment, etc.) or intangible (services, pride, success, dignity, etc.).
- Linkage/integration:** combining and relating issues in the negotiation.

**Mutual gains:** solutions that benefit you and all parties in the negotiation. The benefits can be different for the different partners.

**Negotiation:** a discussion with the intent to agree. The discussions include sharing of information; the making, rejecting and adjustment of offers; the solving of problems; and the making of decisions and agreements. In this textbook, the topic is always generally that of business, not politics, policy, hostages, or other topics.

**Opponent:** a person or group you are fighting ... never use this word when talking about negotiating. You should never *fight* negotiation counterparts!

**Party:** a person or group in a negotiation. The same meaning as counterpart, counterparty, or negotiation partner.

**POTE:** Partial Open Truthful Exchange. Parties tell the truth, but not the whole truth. Parties may wish to conceal certain info such as reserve price and items they want to offer as false concessions.

**Principled Negotiation:** (sometimes called *mutual gains bargaining*) means trying to increase the total value of the negotiation by developing new ideas with your counterparts.

**Reciprocity:** (sometimes called the norm of reciprocity). The back and forth sharing of information among negotiating parties. When one side gives a little, others are likely to give too. Do not give away all your information at once in order to develop a comfortable exchange of facts and ideas. Reciprocity not only shares information, it helps to build up the relationship.

**Relationships:** the long-term connection between the people and organizations in a negotiation.

**Reserve point or reserve price:** the maximum price a buyer is willing to pay. The minimum price a seller is willing to accept. Also called the *reservation price* or the *walk away point*. If the negotiation issue is not about money, it means the extreme maximum or minimum that a party is willing to give or accept in terms of concessions or resources. Beyond the reserve point, there is no logic in continuing the negotiation and you should choose your BATNA (walk away).

**Stalling:** intentionally wasting time to put pressure on the other side or push them into a quick unfavourable agreement. This tactic is not recommended because time pressure is a two-edged sword!

**Stereotype:** a superficial description of a person based on a group, not individuals. Stereotyping leads to misunderstandings if applied to individuals. Stereotyping is only useful as a starting point for careful research into what groups and individuals expect and prefer as well as research into their unique preferences.

**Strategy:** an overall approach to a negotiation. High level strategies include compromise, collaborate, collapse, and avoid. At a lower level of detail, specific strategies include the goals of the negotiation and the sequence of moves necessary to arrive at the goals.

**Synergy:** working together to create new benefits that parties could not manage alone.

**Tactic:** a specific effort to influence the negotiation, for example through behaviour, framing of offers, deceit, staged release of information, increasing or decreasing the comfort level of the other parties. Tactics may be distributive or integrative. Integrative tactics can be used to develop a negotiation, or misused to take advantage of the other negotiators. Distributive tactics may bring short term results but may also derail a negotiation. Distributive tactics are best used in limited ways, and rarely, in order to slightly improve tangible outcomes.

**Threats:** a hardball tactic ... do not threaten your counterparts because it will damage the relationship. A threat may however be effective in bringing a party into a negotiation when they have refused to join. In such cases, the relationship is already quite damaged, and there may be nothing more to lose.

**Ultimatum:** a strong offer or demand that must be agreed to immediately. This is a high pressure tactic. Typically these are offered at the last moment. This tactic is easily defeated by extending your time and continuing a calm discussion.

**Walking out:** a hardball tactic ... only walk out if your BATNA is good enough to break off negotiations. Do not walk out in order to put pressure on the other parties.

**Walk away point:** the same as reserve point.

**Win/Lose:** a very simplified form of thinking about negotiating. Suitable only for distributive negotiations.

**Win/Win:** a more complex and better way of thinking about negotiating – create a deal that all sides can be satisfied with. However, an even better way is to create new value for all parties and go beyond win/win to synergize and create new value.

You can find additional useful definitions at <http://www.negotiations.com/definition/> and other Internet locations.



# APPENDIX II

## Case simulations

The authors have developed the cases below in student class rooms. For additional cases by the authors, visit [www.casecentre.org](http://www.casecentre.org).

### **CASE A2.1: INHERITANCE FAR AWAY**

Theresa Powicki died at the grand old age of 97 in the city of Wellington, New Zealand. She had a reputation as an active and intelligent woman who decisively improved the quality of elementary school education in Wellington. She named her grandson Thomas as the sole beneficiary in her will\*, because he was the only living relative. Thomas and his lawyer are the only ones who have read the will. Thomas lives in Tokyo and works for an international bank. He would visit his grandmother once a year during vacation or Christmas. Travel was long and expensive: 10 hours of flying plus renting a car.

In the past few years, a husband and wife (Bob and Cheryl Willis) not related to Theresa, who lived in the same town, often took care of the aging woman. They took her to the doctor or sometimes to church or on excursions and helped with cleaning, even inviting her to their home on holidays. The Willis family is active in the town contributing to the homeless centre and volunteering at the fire department. Bob is a junior high school teacher, and Cheryl lost her job two years ago.

After her death and after the usual taxes and related costs, Theresa's will included the house, its contents, and about 60,000 New Zealand dollars (NZD) in cash and securities and, surprise, \$500,000 in gold! Apparently Theresa had wisely bought gold from Willis Metals (owned by a cousin of Bob's) in the years before it became expensive. There are

many household items of value, totalling \$40,000, that are part of Thomas' childhood memories. Of course, the value of these items could be great if sold carefully in the proper place and time, but they would be worth less than half that if sold suddenly at one time. The house itself is worth \$220,000 to \$280,000 and perhaps even more if the economy improves in the next few years.

Thomas was pleasantly surprised, he had not expected so much at all. But then the will was contested by the Willises. They felt that their caring was worth \$280,000. Thomas responded angrily, "You were just interested in getting her money, you didn't really care about her!" However they said, "In fact we did a lot while you did nothing. You hardly ever visited and could never help when she really needed someone. Anyway, who could have guessed she had a lot of gold?" This conversation was reported in the local newspaper.

The Willises brought the case to legal court in the city of Wellington. The judge refused to accept the case until after parties to had attempted private negotiation or formal mediation.

Thomas and the Willises decided to attempt negotiation. A court battle might mean months or years of waiting and high court expenses, plus travel costs for Thomas.

\*Note: a "will" is a document that indicates what to do with a person's money and property after he/she dies.

1. Is this negotiation mostly distributive or mostly integrative?
2. What are the interests of Thomas?
3. What are the interests of Bob and Cheryl?
4. Are there issues other than money that Thomas could integrate into the negotiation?
5. Should Thomas, Bob and Cheryl negotiate directly or include another person(s)? If so, who?
6. Approximately, what are the reserve points that Thomas and Bob and Cheryl should set before they start talking?
7. Is it possible for the parties to create value together?
8. What is Thomas's BATNA?
9. What is the BATNA of Bob and Cheryl?

## **CASE A2.2: THREE WAY JOINT VENTURE**

### **Background**

Three companies are engaging in negotiations to form a Joint Venture which will produce an electronics product. The three companies have not

done business together before, but they all have international experience. The companies include:

- TouchPad, KK: A maker of electronic touch pads in Itami, Hyogo, Japan. Seeking a contract manufacturing company to produce a new touch pad for service industry use.
- Wushi Dalian: An electronics assembly company in Dalian (大連), China.
- Taakto OY: A software company in Oulu, Finland.

The three companies have generally discussed their plans by email and phone, but this is the first meeting of all three. The goal of this meeting is to agree to a three-way joint venture, sharing investment, profits, and risk. Roughly, the three companies, Touchpad, Wushi, and Taakto, expect to have a 4:4:2 shareholding ratio respectively.

In order to be successful, the three companies must combine their resources to collect about \$12 million in contributions (cash or other). Therefore they must consider the value of non-cash contributions such as intellectual property, facilities, skills, and so on. These non-cash contributions might help to balance the cash contributions, or they might make it impossible to manage the deal.

If the potential deal is not acceptable to the business needs and realities of one of the companies, then that party should decide not to join the deal.

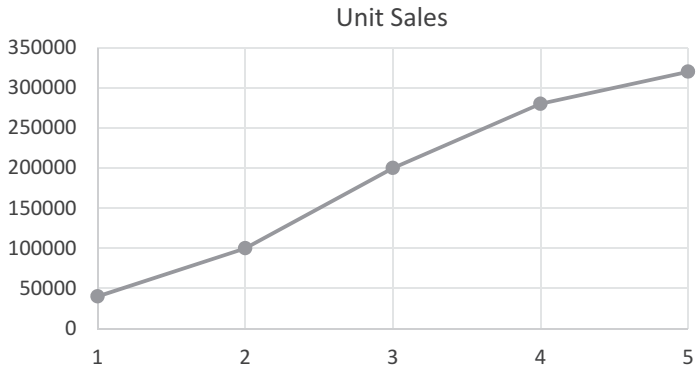
Building on the Memorandum of Understanding (MOU) below, the parties must now decide how to evaluate the non-cash contributions of each. Each side can be flexible in the short term, but the long term outcome has to be one that all parties believe is durable.

Generally, the three companies expect to provide the following elements to the JV, as described in Table A2.1.

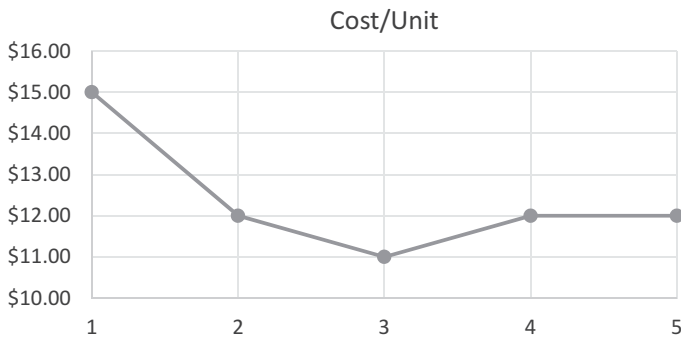
Generally the parties expect to sell the following units per year, for the first five years.

**TABLE A2.1** TouchPad, Wushi, Taakto

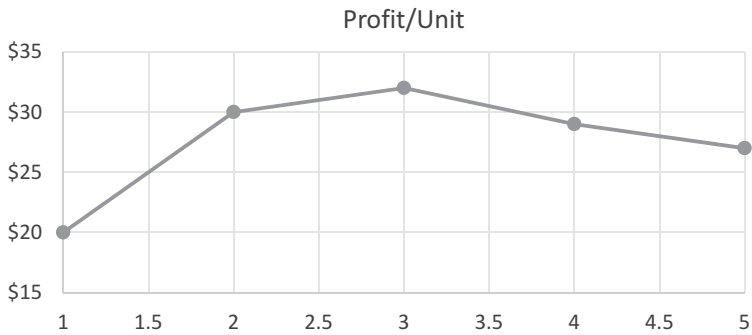
<i>TouchPad</i>	<i>Wushi</i>	<i>Taakto</i>
Design, operating system, marketing, concept, most of the cash investment.	Most of the manufacturing and all of the assembly, most of the non-cash investment	User interface, certain client and server software, post-sale monitoring, some investment in cash, some in-kind expertise



Expectations are that total cost per unit will be as shown in the following table, plus or minus 7% for the first five years.



Profit per unit expectations are approximately as shown in the table below for the first five years.



A non-binding memorandum of understanding (MOU) has already been agreed by each company. The MOU includes the following text.

The parties, TouchPad, Wushi, and Taakto announce their intent to form a Joint Venture (JV) with approximate shareholding of 40:40:20 respectively. The activity and field of the JV shall be *touch screen control pads*. Generally, with details of the following issues to be decided on during negotiations:

- TouchPad intends to take the role of OEM designing the equipment, developing the operating system, and managing the overall concept and undertaking marketing, distribution, after-sales support, and all interaction with customers and end users.
- Wushi intends to take the role of assembler with staff and facilities to assemble components, sub-assemblies, housings and so on. Likewise, Wushi will directly manage certain sub-assembly and component companies that are located in China.
- Taakto intends to design and develop the user interface, certain client and server software, post-sale monitoring and some support services.

### **CASE A2.3: OVD HOSTS THE FOREIGN INVESTOR AND THE LOCAL BUSINESS**

#### **General background for OVD, global design, and LCM**

GlobalDesign is a Canadian company that designs and sells consumer products for daily use, including many innovative products that might be popular for a year or two or which react to new technology. GD is proud that it was the first company to bring products such as protective pads and ergonomic grips to consumer electronics like tablets, smart phones, and the newest wearable technology.

Previously a vertically integrated manufacturer, the company restructured in 2001 to become a designer and B2B/B2G marketing company, leaving manufacturing and retailing behind. Most of GD's manufacturing has been done in China up to now, however a series of unfortunate incidents regarding corrupt officials has made them consider doing business in Ruritania, a large and growing South East Asian country. Ruritania also does not have a snow white reputation, but business acquaintances have said it is "not too bad".

GD has reviewed several companies in Ruritania and asked Overseas Development (OVD) to arrange several meetings. The first is with LCM, a local contract manufacturing company.

OVD is a government agency. It exists to bring together foreign and local companies. OVD's charter allows it to make small investments, take an equity share up to 20% in new companies (JVs or independent firms), and provide

expertise and facilitation in exchange for payment, a fee, or an equity position. OVD is hosting the meeting in their downtown office.

LCM is a three-year-old company with a small plastics facility outside the capital city. It has successfully completed several contracts for US and Japanese firms. They are excited to meet with a large foreign company like GD.

## **CASE A2.4: AP AND SHEPARD FAIREY AND HOPE**

### **Case copyright infringement**

In the year 2008, the US presidential election saw hopes and excitement arise around one candidate in particular, Barack Obama, who would later be elected. The excitement inspired numerous artists to create works based on candidate Obama. One of the most well-known and enduring works was done by Shepard Fairey, an artist using stencil art that had gained wide recognition. For more information about the artist, see [www.shepardfairey.com](http://www.shepardfairey.com) and other sources.

The artist based his work (see <https://www.npr.org/sections/thetwo-way/2011/01/12/132860606/shepard-fairey-and-ap-settle-copyright-dispute-over-hope-poster>) on a photograph taken by Mannie Garcia who was temporarily working for the news agency Associated Press (AP).

AP discovered the original photo was from AP in early 2010. AP was upset to discover that an image which they had ordered and paid for was being used to such wide acclaim – all of which went to Mr. Fairey. Additionally, the image came to be sold on many day to day objects as it became increasingly popular. The profits from these objects went to the artist, not the photographer, and not AP.

AP considered legal action. However things were not so clear. Their lawyers told them,

The picture has been changed – it will be up to a court to decide if the changes are substantial enough that it can no longer be considered the same picture. There are few guidelines and precedents for this matter, so much will be up to the judge.

Further, they explained,

The ownership of the photo is also not so clear. Mr. Garcia was not a full time employee, so his images do not automatically belong to AP. At the time, he was not even a part-time worker for AP, he was a *temporary hire* and had not signed a contract. Even though he was paid for his time and he submitted the photos to AP, it is not completely clear who the rights for the picture belong to.

Meanwhile, the artist refused to discuss sharing the ownership of the changed image or profits from it. Fairey claimed that under the established rules and laws of “fair use” he was legally safe in his use and “reinterpretation” of the image.

With time, AP collected enough legal arguments to consider action; at the same time, Shepard Fairey considered his legal strengths and weaknesses; likewise, Garcia decided to let AP represent him. Both sides gave long thought to the potential costs of a protracted legal battle...and, they decided to negotiate. But what should they agree to?

Here are some facts and estimates regarding the case:

- A court case of this sort could take half a year to five years. One or both sides can maximize the delays in order to drive up the costs and irritation for the other side. A single quick court action might cost \$50,000. A single lengthy court battle might cost \$2.5 million.
- Shepard Fairey has used the art of other artists in much of his work ranging from his “Andre the Giant” series to commissioned work for corporate clients. A legal loss to AP would put him at risk of other lawsuits and potential losses.
- Shepard Fairey claims that he and his design company (Studio Number One) are nearly broke. This claim seems unlikely, but AP has to admit that there would be additional time and cost after winning a court case in order to get any money at all from the artist.
- AP estimates gross sales from products with the image before now 2011 to be \$5 million and \$2 million per annum.
- Fairey estimates gross sales from products with the image to be \$500,000 and \$200,000 per annum currently.
- Independent observers estimate gross sales from products with the image to be “closer to AP’s guess”.
- Fairey claims that income from the Obama poster during the election years was spent entirely on more posters – he considers this to be legally a campaign contribution.
- The cost of an independent audit would be about \$50,000.
- Independent observers estimate that the total market for products with these images could range from \$1 million per annum to \$5 million per annum depending on the popularity of President Obama.
- AP has agreed with the photographer, Mannie Garcia, that they will represent him in the negotiations providing some share of the agreed outcomes to him.

**Your assignment:**

Represent your client (AP/Garcia or Shepard Fairey) to come to an agreement about at least the following points.

- Sharing of profits up to the time of agreement;
- Sharing of profits after this agreement;
- Statements by either side to the public in general;
- Protecting AP photos;
- Other issues, if any.

Determine your goals, your reserve positions for your goals, and your BATNA, and who will participate in the actual negotiation at the table.

## **CASE A2.5: GHANA GALAMSEY GOLD**

### **Ghana Gold: Illegal mining and the Golden Tide mining company**

#### *Background*

Ghana's economy is defined by basic commodities, especially gold, oil, and cocoa. Golden Tide Corporation, a Chinese company, holds government permission in the form of a license to mine gold in various locations in the famous Ashanti gold belt in Ghana. Of the areas where Golden Tide holds concessions, the region of Nokyem is rather problematic because: (i) it is populated by a large number – thousands – of illegal miners called *galamsey*; and (ii) while Nokyem contains an estimated 50,000 ounces of gold (worth about \$88,500,000), it is found in low concentrations and at depths that make recovery almost pointlessly expensive: Golden Tide estimates it would cost at least \$75,000,000 to get that diffusely spread gold with modern methods and equipment over 10 years.

Nevertheless, Golden Tide would like to realize some gains from the relatively low-value Nokyem property, improve its overall reputation in Ghana and gain a long term ally in the *galamsey* and the Nokyem Chief. Golden Tide wants to stay in Ghana as long as possible because the company has other productive gold operations in Ghana. Moreover, as Golden Tide hopes to initiate mining activities in a perceived high-value region neighboring Nokyem, they have a specific interest in somehow preventing the *galamsey* from flocking uncontrollably into that region and infringing upon future Golden Tide mining operations.

The Chief represents the Nokyem area and all its people, including the *galamsey* miners. The Chief has publicly said, "We cannot remove the *galamsey*, but they can do what Golden Tide cannot – get the Nokyem gold at lower cost. Why not transfer the license to us and improve the lives of the *galamsey* and all people here?"

The *galamsey* who are actively mining Nokyem are doing so at very low cost with unsafe equipment and materials. The *galamsey*, however, working cheaply and simply over several decades, could recover much of the low-concentration



gold spending only a hundred dollars or so per ounce. Weekly, about 3,000 miners remove less than 50 ounces.

Golden Tide officials are aware that their Nokyem concession is swarming with illegal mining activity and have been debating options on how best to respond. They cannot rely on the Ghanaian government to remove the miners without violence, and violence would damage Golden Tide's reputation and future in Ghana. Golden Tide sees the 3,000 miners as 3,000 daily opportunities for accidents and pollution – therefore they want to strictly limit the number of miners.

In 2010, over 100 illegal miners were killed underground when a tunnel in the Nokyem area collapsed. Even though Golden Tide was not legally responsible for this accident, the company faced a barrage of negative media attention and was compelled to address the issue in their annual Corporate Sustainability Report. There are numerous injuries and fatalities annually among illegal miners.

In addition to safety problems, the galamsey face some practical disadvantages in their daily work. Because they are operating illegally, they may not directly sell their gold to Ghana's legal gold buying authority, the Precious Minerals Marketing Corporation (PMMC). As a result they have to sell to sub-buyers for a lower price, or barter their gold for immediately necessary goods and services.

Additionally, the PMMC controls the distribution of a vital mining resource: mercury. As they do not possess a license allowing them to lawfully mine gold, the galamsey cannot directly buy processed mercury and the equipment to handle it safely from PMMC. Thus, they must turn to other more expensive and less safe sources. Mercury, a poisonous material, is used to separate the finest particles of gold from dirt, sand, and other minerals. Worse, the galamsey usually clean the mercury by hand, squeezing it through heavy cloth, which means even more exposure to the poison as well as more damage to the environment. With direct access to PMMC, the miners could buy cleaned mercury and return the dirty mercury safely and at reasonable cost. Apart from the issue of mercury, if the galamsey could directly sell at a reliably higher price to PMMC, they might also be willing to embrace other more expensive but safer methods and means of gold extraction, even if a somewhat lower yield of gold may result.

But in order to sell to PMMC at a higher price, they must become legal by gaining the license now held by Golden Tide.

Notwithstanding their illegal nature, the heads of each galamsey group operating in the area pay a fixed registration fee per worker and weekly rent (3% of their gold) to the Nokyem Chief as the traditional holder of the land. If the Chief secures the license (from Golden Tide), he and the galamsey can take legitimate control of the situation and work to improve the quality and efficiency of their operations. The galamsey camps of Nokyem are well organized and already operating under a system of by-laws that institute transparency, fair labour practices and careful accounting.

Dan Go, Chairman and Chief Executive of Golden Tide Mining Corporation has said, "Our goal is to leave a legacy of increased prosperity by building sustainable capacities for the communities who are our neighbors so that even after the mine eventually closes their lives would continue in an improved state."

The Golden Tide executives believe that lawful and more formalized mining of the low-concentration gold deposits could be successful because the Nokyem galamsey are already well organized with some worker protection and accounting systems in place. But, they say, "This process will not be simple, if the galamsey and the Chief are not clearly interested in cooperating, we should stop the negotiations and spend our money and time on other projects. Also, they must be serious about spending their money to improve safety, environmental protection, economic development."

Golden Tide views with interest the failure of Newmont Corporation to come to an agreement with the Nokyem Chief during negotiations some years ago. There is factual historical information about the Newmont discussions that negotiators can easily research and use. As far as Golden Tide is concerned, all mining operations in Ghana are handled through their home office in Shanglin, China, rather than the local office. Reopening the negotiations may be the new opportunity to come to some agreement.

**TASK:** Create an agreement suitable for all parties to transfer some percent, or all, of the license to mine Nokyem from Golden Tide to the Nokyem Chief.

Please visit these and other sources of information to learn about gold mining in Ghana and the galamsey

[www.ghanaweb.com](http://www.ghanaweb.com)

[www.im-mining.com](http://www.im-mining.com)

[www.newmont.com/](http://www.newmont.com/)

[www.aljazeera.com/programmes/101east/2016/12/china-african-gold-rush-161213120529920.html](http://www.aljazeera.com/programmes/101east/2016/12/china-african-gold-rush-161213120529920.html)

## **CASE A2.6: SHOE BUSINESS COMPETITION**

### **General information**

Mr. Tang and Mr. Lee were colleagues in a division of Runaway Sports company<sup>1</sup> in 1993, devoting their personal time to developing a unique, dual-purpose, roller-skate trainer. For over three years, Tang and Lee devoted their evenings and weekends, working through the research and development (R&D) process. The various expenses of developing drawings and a 3D prototype were financed by Tang Industries<sup>2</sup> – Mr. Tang's father's family business.

The unique roller-skate trainer was thus developed in Taiwan and a patent was first granted in Taipei, 1999 and classified as an invention<sup>3</sup> type of patent. Tang and Lee shared time developing their ideas, investing in the product as a joint business venture to generate lucrative profits. Further patent applications regarding this roller-skate trainer were submitted to over 50 countries in East Asia, Central and West Europe and North America. At this point, Tang and Lee left their day jobs to work full-time developing their own business.

The original prototype was considered the personal property of both Tang and Lee – under patent law, each co-inventor named on the patent application owns that property. Patent law gives co-owners of a patent the right to make, use, licence, sell and import the patented invention. Having gained the official patent license, Tang and Lee shared the rights to their exclusive product. The priority of the patent right prohibits other parties from producing imitation goods in the countries where the patent has been granted, acting as protection against intellectual infringement. Upon release, both Tang and Lee had legal claim to future revenue and for a while both Tang and Lee seemed content.

### *History between Tang and Lee*

Of the two, Tang was the more business savvy. Tang had an eye for detail and benefited from having a strong family network as Tang's father was a well-respected entrepreneur with manufacturing plants dotted throughout South East Asia. Lee's physics' background helped distinguish what they were offering. His technical knowledge was fundamental to the product's inventiveness. Lee was confident that the design and appearance of the prototype was sure to be a smash hit and his production design was both sleek and functional. The prototype was to be the first dual-purpose shoe of its kind and although the R&D costs were substantial both men were confident that they could recoup the costs relatively quickly. Up until this point, Tang's family had financed the project from conception through R&D and also through initial production as Tang and Lee had encountered problems getting credit to manufacture at the scale they desired.

Between 1999 and early 2001, the patents to over 50 countries' applications were granted and the prototype was launched and distributed throughout the world. The trainer sold especially well in the domestic market of Taiwan, as what they had developed was truly original. The annual revenue of this trainer for global sales and patent authorizing to other firms was 100,000 USD. Tang valued Lee's sense of design and agreed to share future profit with him on a 50-50 basis, despite Tang's family having financed the R&D costs, estimated at 40,000 USD. Their trainers were marketed towards kids and teenagers.

### **Conflict**

Lee thought Tang was taking credit for his contribution and the two had conflicting ideas on how the original prototype might be improved. Unexpectedly and rather quickly, Tang and Lee parted company in late 2001, soon after the original prototype patent had been granted. Lee left Tang and moved to Europe to establish his own company within two years. Tang also established his business in 2001 as a sub-unit of his father's business enterprise and utilized his family's network connections to distribute the roller-skate trainer as his father's business had trade links throughout Asia and the Far East.

From 2001 to 2003, both entrepreneurs implemented individual business strategies and important new products, loosely based upon the original roller-skate trainer. In 2013, Tang and Lee both released their own second-generation roller-skate trainers, based on their initial prototype. Tang released his second-generation trainer in November, 2013 and mainly applied for design patents and utility patents. Lee realized his second generational trainer in March, 2013 with a pending patent in invention and utility. Their second-generation trainer's patents had unique attributes and the shoes themselves were re-designed for customers with different needs. The key features of Tang's second-generation trainer included a cool and easy adhesive strapping. The shoes were hard wearing and featured a cushion sole. Lee's second-generation trainer included a shock absorbing foam-based material located in the shoe's sole, inspired by his background in physics. Bitter rivals, Tang and Lee quarrelled over who had had the original idea and spent a small fortune securing patents in a variety of domains but also on litigation – suing one another over breach of intellectual property and ownership.

### **Marketing positioning**

In keeping with Tang's price point, Tang's roller-skate trainer became especially popular in the Far East as his shoe was substantially cheaper (40%) to manufacture than the competition in Europe. Lee's roller-skate trainer was more stylish, comfortable and sold well to fashion conscious Europeans. His business had to absorb higher production costs and focused on developing products that were truly innovative, as compared in Table A2.2.

**TABLE A2.2** Tang and Lee 2nd generation products

<i>2<sup>nd</sup> generation</i>	<i>Manufacturing price/pair</i>	<i>Manufacturing location</i>	<i>Market price/pair</i>	<i>Product key characteristic</i>
Tang's shoe	5-7 USD	South Asia	13-17 USD	Fair value
Lee's shoe	8.5-11.5 USD	Europe	18-26 USD	Fashion

**TABLE A2.3** Tang and Lee comparison

<i>Background</i>	<i>Employees</i>	<i>Firm's turnover</i>	<i>Granted patents since 2001</i>	<i>Key business network</i>
Tang's firm	12 people	850,000 USD	1 invention 3 utilities 5 designs	South American countries and East and Central Asian countries, Middle Asian emerging countries
Lee's firm	5 people	450,000 USD	4 inventions 4 utilities 15 designs	European and North American countries

The two sports trainer entrepreneurs became bitter rivals, doing whatever they could to get an edge over the other. Neither Tang nor Lee were beyond poaching staff and occasionally would go out of their way to put the other's product in a less than positive light.

It took many years before Tang and Lee could discuss matters rationally and not wanting to meet face-to-face, they appointed their trusted business advisors to seek out an amicable solution to resolve their long-standing dispute. As Mr. Lee's trusted business advisor, Helmut is expected to find a satisfactory solution to please his client. Wei Wei is a trusted business advisor of Mr. Tang and she is expected to find a beneficial solution for her client. Both Helmut and Wei Wei are patent clerks in private commercial firms and have arranged to discuss their clients' concerns and negotiate on behalf of Tang and Lee to find a mutually beneficial and satisfactory solution.

Note: A patent clerk in commercial enterprise is often an investigator charged with examining patent applications to provide consulting opinions to patent applicants as to whether a claimed invention could potentially be awarded a patent. Generally speaking, the most important task of a patent clerk is to review the technical information disclosed in a patent application. This involves reading and understanding a particular application and then, searching to determine what technological contribution the application teaches the public.

A patent is awarded for informing the public about special technical details of a new invention, so the work of a patent clerk involves: searching existing patents, scientific journals and data resources and other material for prior artwork (diagrams etc.) and verifying an application to determine whether it complies with the legal requirements. These requirements are often substantially different depending on the country in which the patent has been registered.

**Further questions for consideration:**

- What are the distinguishing attributes of their positions?
- What are the dispute points?
- What do Tang and Lee stand to gain by pooling their resources?

**CASE A2.7: ZAWASOFT AND PAK-TON****Background info**

ZawaSoft and Pak-Ton are considering a partnership. ZawaSoft's new "On the Spot" software makes it possible for Pak-Ton's electronic batteries to last three times longer. Pak-Ton would like to license the technology from ZawaSoft for its products (electronic batteries for small electronic equipment up to 1kg).

ZawaSoft has three shareholders with 20% each. According to newspaper reports, the shareholders are aggressive about seeking profits within a one-to-two-year timescale.

Pak-Ton was established by a committed Zen Buddhist; this philosophy and system of ethics remains a basis of the company today. Pak-Ton publishes a quarterly newsletter relating their business and ethics to Buddhism and has annual events with temples near company offices and plants.

**CASE A2.8: RECRUIT THE BEST!****Recruit the best!**

FC Nürnberg is a club in the top league of Germany, the Bundesliga. The club competes against top teams like Munich, Hamburg, and so on. Although Nürnberg has always been in this league, it has never won the title and it seldom performs strongly. The past two years, however, have seen a significant improvement in the quality of play and players and the number of victories. The club's fortunes appear to be headed upward!

This year FC Nürnberg is recruiting another leading player into the team. Financial resources are limited of course, so they are aiming to get only one player. They hope they have found their new star in the person of Bolas Chojonez. Chojonez is a shy and religious person who taught swimming safety in his home country (which he misses) and famously rescued two children from a flood there. He swims daily.

Chojonez arrived from his native home of the Philippines to the league below Nürnberg's two years ago. Each year he has improved, especially last year. His opportunity to leap into one of Europe's leading leagues has

come! It is this league that has produced World Cup winners and legendary individuals, teams, and coaches for 40 years.

Chojonez is now 19 years old, considered young for a football player. If he can avoid injuries, he may have 10 to 12 years of good football ahead of him. Chojonez is considered among the top players of the lower league, but has not been ranked within the Bundesliga.

The Nürnberg team pays “starting squad” players an average of Euro 0.5 million per season (there are 18 games in a season), usually minus 5% for every missed game. (If the game is missed due to injuries, the player loses only 2%.) First year members are usually paid less. In addition to the 11 starting team members, there are 20 other members who play on practice teams and occasionally join the main team. These players earn an average of 150,000 Euros annually.

FC Nürnberg has a strong connection to the city’s community. Players appear in public at kids’ programs and other events frequently throughout the year. Popular players attract many daily emails and letters as well as fans with signs at games, therefore shirts with their name and number sell well.

#### Your task

Please come to an agreement that covers at least the following contract issues:

- Salary
- Number of years
- Illness/injury compensation

It is of course acceptable to come to no agreement.

### **CASE A2.9: SONDE SA STRIKES A BALANCE**

General information for all participants:

The Japanese affiliate (in Osaka) of Sonde, SA has a small number of French expatriates on the sales and design team – only 10. Of these, five change annually meaning that each person is in Japan for two years. These expatriates arrive and leave with the Japanese fiscal year (April – March). They expect to take three to four weeks of vacation in August like most people in France. But they are instead limited to a few days during *Obon*, a three-day national vacation. As a result, several of them stay home “sick” for a week or more in August and or September. At the end of two years, they generally stop working early in March, staying home for almost one month. They say they are sick, but probably they go bicycling in the countryside!

This cross-cultural simulation includes five roles. There are two French roles (the site CEO and a representative of the French workers) and three Japanese roles (Human resources manager, the head of the sales and design team, and a low level supervisor).

The French staff complain about the short vacation time loud and long each year.

Your job is to find a suitable solution. You will discuss and interact with the following people:

- HRM Chief Manager
- Head of sales and design team
- French CEO of Japanese affiliate
- Japanese supervisor of the design team
- French worker (sales and design team member)

See the online eResource at [www.routledge.com/9780367421731](http://www.routledge.com/9780367421731) for each of the five roles above.

## **CASE A2.10: CULTURAL IP ANIME**

### **Background**

PXWX of Hangzhou, China is an animation firm that provides animation services to various Japanese animation studios. The studios in Japan develop the main content, ideas, characters, style, and stories. PXWX usually provides services such as colouring, background, and the many drawings that fill in the movement between “key pictures”. This relationship has been stable for about 10 years as PXWX has steadily increased its gross revenues, number of contracts, and number of customers in Japan.

RekiMan of Hirakata, Japan became a customer of PXWX about four years ago and has enjoyed a good relationship with PXWX during that time. RekiMan specializes in animations of historical material and folktales targeting young adults.

Last year, PXWX began its first original animation series. It is for the Chinese market. PXWX developed the style, the characters, the stories, all animation sequences...everything, releasing the first series of 10 episodes to wide domestic acclaim. In the development process, the storyboards (a series of pictures outlining the action) of an episode were accidentally sent to RekiMan. RekiMan quickly returned the materials to PXWX with encouraging comments about the quality of the materials and PXWX’s project in general.

PXWX, however only last week, was horrified to find that a work order from RekiMan included a set of storyboards strikingly similar to the ones PXWX had accidentally sent to RekiMan. PXWX was incensed!



They immediately notified RekiMan that they would start legal action for theft of Intellectual Property in the Hangzhou city court system. PXWX was quoted in a news article in the Hangzhou Business Press complaining about RekiMan's piracy. Further they told RekiMan that work would immediately stop on the current project, though the contract was 20% (\$300,000) pre-paid and only 10% of the work had been done. Finally, they told RekiMan to stop work on their Yamashiro White Snake project in Japan or face additional legal action in Japan.

RekiMan responded that they had in no way stolen anything from PXWX and proposed negotiations to avoid court proceedings that would destroy the relationship and be pointlessly expensive. PXWX, feeling somewhat less heated, agreed to listen.

## **CASE A2.11: TOYOTA TSUSHO AND ENCANA – SECOND ROUND**

### **Background for Toyota Tsusho and Encana**

In April 2012, Toyota Tsusho and Encana announced an agreement in which Toyota Tsusho would pay \$602M to gain 32.5% of Encana's Horseshoe Canyon field. This field produces so-called *dry gas* from coal beds at relatively shallow depths.

The development of coal bed methane (CBM) gas is not too expensive because wells are neither deep nor high pressure. However, when a field is mature, it does not produce gas so quickly. How much gas remains in a developed dry gas field like the Horseshoe play is quite well understood, so it is usually possible to know when the field will be depleted, and when the remaining gas will require more expensive efforts to recover it.

The 2012 deal included 4000 existing wells and 1500 future wells. The field has been in production many years and the geology (and output) is very well understood and very predictable. The deal is a "royalty interest" deal in which Toyota Tsusho will get 32.5% of gas produced.

Toyota Tsusho was quite satisfied with the 2012 deal: it captured a long term supply of easy to handle gas with easily predictable maintenance and running costs. So, Toyota Tsusho sent its accountants to sharpen their pencils...and found some additional money it could use for more gas field investment.

Toyota Tsusho and Encana are preparing new negotiations for other gas fields or additional investment in some of the remaining part of Encana's Horseshoe Canyon play that is not part of the original agreement, now part of Prairie Sky Royalty. Encana holds 60% (78 million shares) of this company.

With Japan's nuclear power plants almost all closed and unlikely to re-start soon, and access to oil from Iran, Russia and other countries seemingly always at risk, the appeal of energy from a *politically reliable* source is great. Canada, a politically stable energy exporter, is a great potential partner. Moreover, gas is much cleaner than the coal that Japan imports from Australia, China, Indonesia, and North America. Japan consumes about 4,500 billion cubic feet of natural gas annually, of which about 4,300 billion cubic ft are imported (source: [www.eia.gov](http://www.eia.gov)).

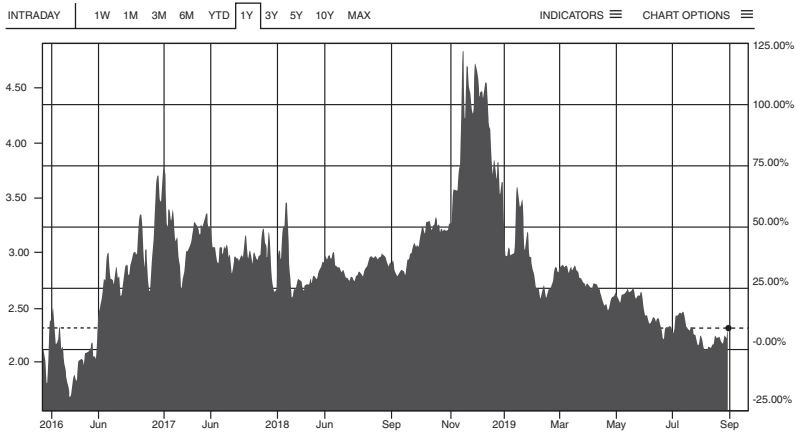
Total annual primary energy consumption in Japan is over 18 quadrillion British thermal units (btu). <http://www.eia.gov/countries/country-data.cfm?fips=JA>

In recent years, North American gas producing companies in North America are avoiding investment in CBM currently as the price of gas has declined in the past decade and recovers only during winter months to prices between \$3.00 and \$4.00 per million BTU. Price forecasts are changeable (see <https://www.cmegroup.com/trading/energy/natural-gas/natural-gas.html>). Even though most thermal power plants in North America have switched to gas from coal, supply seems likely to stay ahead of demand.

In 2012, ConocoPhillips announced "ConocoPhillips will virtually cease capital spending on North American dry natural gas assets to focus on projects that offer higher returns." <http://www.platts.com/RSSFeedDetailedNews/RSSFeed/NaturalGas/6279120> For that company, and others, it meant a focus on oil and "wet gas". The term "wet gas" refers to natural gas that includes many complex hydrocarbons including highly valuable liquids (condensates). These liquids are easy to transport (no condensing equipment or pressurized pipeline needed), require less processing than crude oil, and command a high price. Dry gas, on the other hand, has less value and is usually transported continuously and efficiently by pipeline, but requires very little processing.

Encana has developed the Horseshoe play in accordance with the Toyota Tsusho agreement drilling additional wells. Production after royalties averaged approximately 335 MMcf/d of natural gas and approximately 9.9 Mbbls/d of oil and NGLs. At December 31, 2013, this play included approximately 1.7 million gross undeveloped acres (1.5 million net acres) that Encana controlled. Source: <http://www.otcmarkets.com/edgar/GetFilingPdf?FilingID=9798266> For the purpose of this negotiation, the 1.7 million acres mentioned above are not available for discussion.

Gas prices appear to be recovering in North America, however most analysts predict long term over- supply. Figure A2.1 shows the change in natural gas prices in North America from Spring 2016 to Fall 2018. Wise negotiators will update the information below at any of several websites with commodities data.



**FIGURE A2.1** Gas price movements

Source: <https://markets.businessinsider.com>

### Useful Jargon for all parties

**Bbl:** a unit measure of oil, a barrel of oil. One bbl = 158.98 liters.

**Btu:** British Thermal Unit. A measure of energy, one 1 cubic foot of natural gas contains about 1030 Btu. Japan uses about 20,000,000,000,000,000 Btu of energy (all sources) annually.

**CBM:** Coal bed Methane, gas that comes from coal located in the ground.

**Condensate:** natural gas condensate. A range of chemicals found in natural gas and oil that can be used for making fuel or plastics. These must be separated from the widely used “dry natural gas” that is transported in pipelines and tanks to point of use. The separation of condensates from gas usually occurs at the wellhead or a processing facility in the pipeline. Condensates are inexpensive to refine further (oil, for example, is more expensive and complex to refine).

C1 is methane (dry gas). The “liquid rich” gases are:

C2 Ethane

C3 Propane

C4 Butane

C5 Condensate (liquid, not a gas, composed of various hydrocarbon chemicals)

**Dry gas:** gas that comes out of the ground with few or no condensates. Generally, gas from coal beds (CBM) is dry.

**Flaring:** the practice of burning unused gas at the wellhead. This practice is targeted by environmentalists as destructive and wasteful.

**Play:** the meaning of “a play” in the oil and gas industry is an opportunity to get resources from a certain geology. Example: Barnett shale oil in Texas is a “play” that refers to oil in a certain kind of rock found at a certain depth in a certain region. The Alberta Bakken play means oil and gas in a layer of rock covering more than 500,000 km<sup>2</sup> below the surface in Saskatchewan, Manitoba, North Dakota and Western Montana. Many other wet and dry gas plays exist in North America.

**Royalty interest:** “In the oil and gas industry this refers to ownership of a portion of the resource or revenue that is produced. A company or person that owns a royalty interest does not bear any of the costs of the operations needed to produce the resource, yet the person or company still owns a portion of resource of revenue produced.” Source: <http://www.investopedia.com/terms/r/royalty-interest.asp#ixzz1vhlb7jHj>

**Shallow gas wells,** including CBM wells, are usually low pressure and therefore relatively cheap to build and maintain.

**Wellhead:** the point where the gas or oil well breaks the surface. The wellhead is a structure immediately below and above ground that safely maintains pressure and strength. If a wellhead fails, there is usually an explosion, fire, and tremendous damage.

**Wet gas:** two meanings: (1) natural gas that comes out of the well with high levels of condensates. The condensates can be sold with little or no processing. (2) gas that occurs with water coming out of the well. The water must be disposed of (expensive and requires special plans and permits).

**Cubic feet:**

Mcf = thousands of cubic feet

MMcf = millions of cubic feet

Bcf = billions of cubic feet

Tcf = trillions of cubic feet

1 cubic foot = 0.0283 cubic meter

1 cubic foot = 28.3 liters

## **CASE A2.12: CHANNEL-PORT AUX BASQUES**

### **General information Port-aux-Basques and AFD**

Channel-Port aux Basques is a town of old fishing villages. It is one of the oldest continually inhabited towns in Newfoundland, founded in the 1680s by Basque fishermen from France and Spain. Prior to that, Basque, French, Portuguese, and Spanish fishermen visited irregularly to trade with the aboriginal population, from the mid 1500s. The town is some 900 km east of the city of St John’s, Newfoundland’s main city. The locations of Channel-Port aux Basques and Newfoundland can be seen in Figure A2.2. The economy is supported mainly



**FIGURE A2.2** Newfoundland, Canada

Source: © Google Maps

by the Marine Atlantic ferry terminal which connects the Newfoundland to Nova Scotia. In addition to the maritime history, the remains of the rail station and some old boats make the town an interesting historical location.

The city managers will meet with a development agency to seek funding to improve the local economy.

## **CASE A2.13: THREE PARTY E-MAIL NEGOTIATION – RESIDENTIAL REAL ESTATE**

### **General information for all parties**

The following case is to be conducted by e-mail only negotiation. The three parties involve:

- Vender – Seller of the property, Mrs. Lee
- Estate agent – Wang Home
- Buyer – Mr. and Mrs. Pim (Thai couple).

The housing market in Asia has been growing. Lately, Asia-Pacific housing markets are getting stronger.<sup>4</sup> There are more and more foreign and overseas buyers who are finding property prices are affordable in Malaysia. People are wanting to sell their homes as they stand a better chance of getting a good price for their property. Properties are selling very quickly. The difficulty of finding reasonable prices is helping the housing market inflate. From a buyer's perspective, a new influx of homes has come to market, giving buyers more opportunities to invest in different types of properties. Estate agents are pleased to see new opportunities opening up.

A married couple, Mr. and Mrs. Pim, are planning on settling down and are considering raising a family together. After discussing mortgage advice with various bankers, they are aware of how much they are able to borrow.

They have a good credit history and have incurred no debts of any kind. Mr. and Mrs. Pim hold bank accounts in both Singapore and Malaysia and bank with the same globally recognized financial institution.

Currently, Mr. and Mrs. Pim rent temporary accommodation in a suburb of Kuala Lumpur, Malaysia, near to Mrs. Pim's workplace and a second apartment in a quiet and safe area, close by Mr. Pim's retired parents in Singapore. Despite living in Malaysia for over three years, neither Mr. Pim nor Mrs. Pim speaks fluent Malay or English. Mr. Pim speaks no Malay whatsoever and spends at least six months of the year in Singapore, working in the music industry. Due to the disadvantage of language, the couple would like to use e-mail to communicate and negotiate with the estate agency in Malaysia.

Mr. and Mrs. Pim have been actively searching for a house in March and would like to have their own home by summer time. Mrs. Lee as a teacher would like to sell her house before the new term starts. The estate agency – Wang Home – is responsible for Mrs. Lee to sell her house in Kuala Lumpur, Malaysia (see the house brochure Ref. KLA03A).

*Note: The house price with INC, indicates that the agent fee is included in the house sale.*

### How to conduct this negotiation

This is a 5-day e-mail negotiation. Participants are encouraged to plan their e-negotiation strategy in advance. There is a suggested maximum of ten e-mails that may be exchanged between each party. The rules are simple:

- A maximum of 10 individual e-mails may be exchanged between the buyer and the agent.
- A maximum of 10 individual e-mails may be exchanged between the vender and the agent.

There is no word limitation and attachments are also permitted.

**TABLE A2.4** Three party email negotiation: Issues and initial planning

<i>Cost</i>	<i>Buyer</i>	<i>Seller</i>	<i>Agent</i>
Renovation	9,000 MYR	20,000 MYR (18 months)	No sale, no fee. The higher the agent's fee, the lower the soli- citor's fee.
White goods	Not in the budget	3,000 MYR (6 months)	
New furniture	Not in the budget	7,000 MYR (18 months)	

(Continued)

TABLE A2.4 (Cont.)

<i>Cost</i>	<i>Buyer</i>	<i>Seller</i>	<i>Agent</i>
House removal	1000 MYR	1,000 MYR (furniture)	
House gain tax		30% of gain above 220,000 5000 MYR or 10% exemption	
Agent's fee	Included in house sale		
Solicitor's fee	0.75% of the cost of the house sale that excludes the agent's fee		
Stamp duty	100,000 for 1% above to 275,000 for 2%		
Others	900 MYR (rental)		
Example	If the house is sold for 275,000 inclusive of 2.75% agent's fee (7562). The solicitor's fee: $(275,000 - 7562) \times 0.007 = 1872$ . The stamp duty fee: $100,000 \times 0.01 + 175,000 \times 0.02 = 4,500$ The total cost of the house, including legal fees is 281,372.		
<b>BATNA</b>	Other house 299,000 MYR or Property in Singapore (more expensive, and more likely to be an apartment).	Share the cost of the agent's fee between buyer and seller. Play time and await a higher offer and risk sacrificing the down payment on new property.	Reducing agent's fee for the seller. Suggesting both parties split the agent fee.
<b>RP</b>	275,000 MYR of house sale price.	Furniture inclusive.	
<b>Asking price</b>	256,000 MYR.	275,000 MYR	
<b>Walk away</b>	300,000 MYR including all costs.	250,000 MYR (about to lose profit)	

**TABLE A2.5** Three party email negotiation: Value claiming by party

	<i>Motive</i>	<i>Needs</i>	<i>Value-claiming points</i>
The buyer	Raising a family.	Close to transportation links. No vehicle. Have little money. Time pressure on housing market. Avoid addition rent in Kuala Lumpur.	First time buyer. No house chain. Quick transaction. Bank's initial agreement. No sale, agent makes no bonus.
The agency	Getting bonus. Source of majority income.	Linking the interests of both parties.	Strategic advantages of the location. Fairly new renovation condition. Good transportation links. Ready to move-in condition. Quick sale to reduce time pressure. Company resources. Before the new term starts. A minimum value is set on MYR 250,000 for foreign buyer.
The seller	Moving with Mr. Lee.	Down payment. Time urgency on down payment.	Found the property. Ready to move-out. Selling pieces of furniture or white goods. Good taste on the house. Highlighting the second house project with the same estate agent. No sale, agent has no bonus.

### ***For the seller, deciding how to sell to***

If you can't sell your home to the buyer, you may wish to take into account whether the buyer:

- is a first-time buyer
- has found a buyer for their own property. If so, is it part of the chain of buying and selling and how long is the chain?
- is your buyer paying cash or are they more likely to get a mortgage.
- wants to move at the same time as you.



### *Five tips on selling*

1. Price. A person can generally sell a house by lowering the price.
2. Differentiation from the neighbours. Make the house memorable, high-grade windows, new roof, custom-designs and improvements, such as patio or conservatory.
3. Appearances count. Remove all clutter from inside and outside of the building. Potential buyers want to see a clean and tidy house that is spacious.
4. Sweeten the pot. Another way to attract buyers is to offer incentives. For example, offer to reduce fees for a quick sale or offer to pay the cost of moving home. Offer transferable warranty or offer to introduce them to what is available in the neighbourhood.
5. Improve curb appeal. Remove unsightly shrubbery. Paint the front door or patch-up the drive. The first thing a buyer sees is a house's external appearance and the way it looks compared with the surrounding neighbourhood will set your property apart.

### *For the buyer, how much do you want for your home*

The estate agent in Singapore or Malaysia is responsible for obtaining potential buyers. The agent would try to get the best possible price for the seller. Just remember, the seller does not have to accept the first offer put to them. The seller shouldn't be rushed into making a decision he/she may regret.

*Define your criteria* Decide what you are looking for in a property – whether you require parking and/or a garden, a specific number of bedrooms, the style and period may also be relevant, etc... Most importantly, what you want out of the location, schools, commuting convenience, shopping, noise levels, and so on, so do your research. This is likely to be your biggest personal financial outlay in your life. So visit several properties and be selective.

### *Accepting an offer*

Even if the seller has accepted an offer, there is nothing unlawful about a change of mind and accepting a higher offer from someone else before you have exchanged the fee to take the seller's home off the market. The seller should also bear in mind that when an offer is made and accepted, the potential buyer has the option to change his/her mind. The buyer has 14 working days in which to withdraw.

### **Legal work**

After the seller has accepted an offer, he/she is required to inform whoever is doing the legal work. In both Singapore and Malaysia, this is done by either a solicitor or licensed conveyancer. In Malaysia, a solicitor works on behalf of both parties – seller and buyer. Recently, however, it is becoming increasingly common for both parties to be represented by individual solicitors: one for the buyer and a second representing the seller.

When foreigners purchase any kind of property, the minimum value is set at MYR 250,000<sup>5</sup>. To take the advertisement off the market, a letter of Offer/Acceptance must be signed and a 3% deposit is expected from the buyer. Then, the Sale and Purchase Agreement must be signed within 14 days and stamped at the Stamp Office. It suggests the buyer has a 14 day cooling off period during which time they could abandon the project, however they would lose the deposit. From the date of signing, the buyer has 3 months (maximum) to complete the full transaction.

Ref. KLA03A

Wang Home

*House in Sri Hartamas*

**275,000 MYR INC.**

Attractive semi-detached town house built in 1900, with an art-nouveau exterior. This period property is situated in the residential area of Sri Hartamas, nearby Ampang. The neighbourhood has access to restaurants and a supermarket. The property includes 4 generous bedrooms, office, large living room leading to a modern fitted kitchen. The property also includes two bathrooms. The ground floor has access to two large storage spaces. Total living space is 130m<sup>2</sup>. Excellent transportation links: a 350m walk to two bus stations and 800m to a metro station. Energy performance certification is rated at the level of Standard.

### **Characteristics**

Year	1900 established	Garage	No, shared driveway at rear
Type	Semi-detached house	Kitchen	Separate kitchen
Interior	Excellent, art-nouveau design	Transport	Metro and bus
Energy	6-year boiler	Windows	Single-glazing throughout, with authentic art characteristics
Flooring	Original oak-flooring	Garden	No, terrace decking
House tax	800 MYR/year	Cellar	No, but 2 large storages
Community charge	No	Bathroom	2 bathrooms and 2 toilets

Ground floor:

Entrance: 8.5m<sup>2</sup>

Storage underneath stair: 1m<sup>2</sup>

Tiled flooring

Toilet with basin: 2.5m<sup>2</sup>

Shared driveway (45 m<sup>2</sup>) with two further storage spaces towards the rear of the house (10/12m<sup>2</sup>).

First floor:

Landing and hallway: 7m<sup>2</sup>

Living room+ dining space: 42m<sup>2</sup>

Terrace: wood decking 20m<sup>2</sup>

Office: 4m<sup>2</sup>

Second floor:

Landing and hallway: 4m<sup>2</sup>

2 bedrooms: 13.5m<sup>2</sup>

En-suite bedroom: 16m<sup>2</sup>

Bathroom: 7.5m<sup>2</sup> including wash basin, toilet, bathtub

Third floor (attic):

Hallway: 2m<sup>2</sup>

2 bedrooms: 9/11m<sup>2</sup>

## Notes

1 A fabricated company name.

2 A fabricated company name.

3 There are three categories of patent in Taiwan: Invention, Utility and Design.

- Invention: a creation from a technical concept based on the laws of nature (20 years duration).
- Utility: a creation which has been made in respect of the form, construction or fitting of an object (10 years duration).
- Design: a creation made in respect of the shape, pattern, color or their combination of an article (12 years duration).

4 <http://www.globalpropertyguide.com/investment-analysis/Q4-2013-Worlds-housing-markets-in-headlong-boom-led-by-US-and-Asia-Pacific>

5 <https://www.globalpropertyguide.com/Asia/Malaysia/Buying-Guide>



# APPENDIX III

## Planning documents

### Distributive/integrative + new value creation

In Table A3.1 Identify each issue on a continuum between Distributive and Integrative. Note any New Value Creation possibilities related to the issue.

**TABLE A3.1** Planning continuum

<i>Issue</i>	<i>Distributive</i>	<i>Integrative</i>	<i>NVC</i>
	<----->		
	<----->		
	<----->		
	<----->		
	<----->		
	<----->		

**TABLE A3.2** Planning continuum example (Powicki case)

<i>Issue</i>	<i>Distributive</i>	<i>Integrative</i>	<i>NVC</i>
House	<-----X-->		Rent it for several years, then sell
Gold	<-X----->		
Cash accounts	<-X----->		
Personal belongings	<-----X----->		Keep some but auction others
Reputation	<-----X-->		
	<----->		

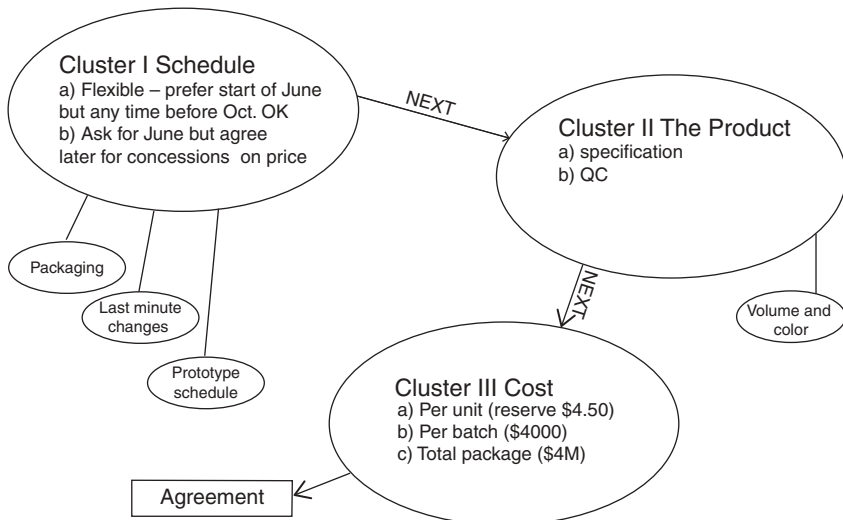


**TABLE A3.3** Brett planning sheet, blank

Issue	Self		Other	
	Reserve		Reserve	
BATNA				
Overall Goals				

**Planning document – clusters**

**Manufacturing Contract Negotiation**



**FIGURE A3.1** Cluster planning



Cluster Planning is most useful for complex negotiations with multiple parties.

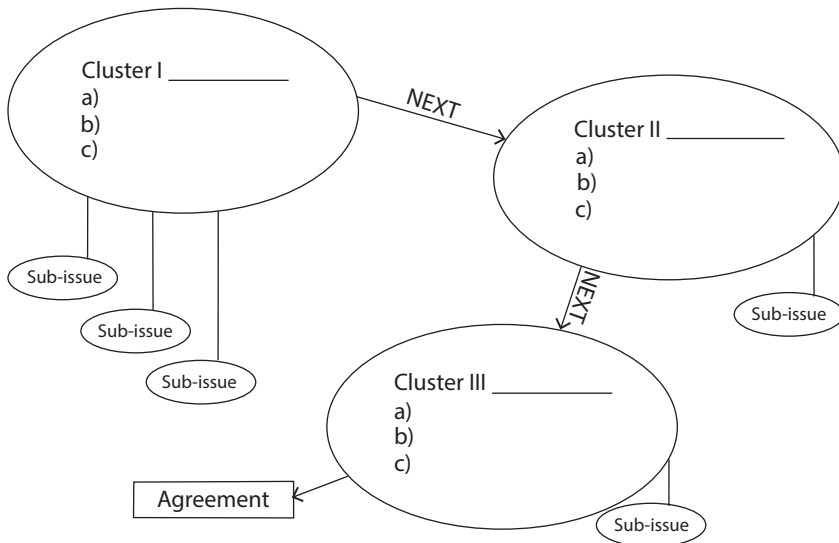


FIGURE A3.2 Cluster planning, blank

### Reserve line

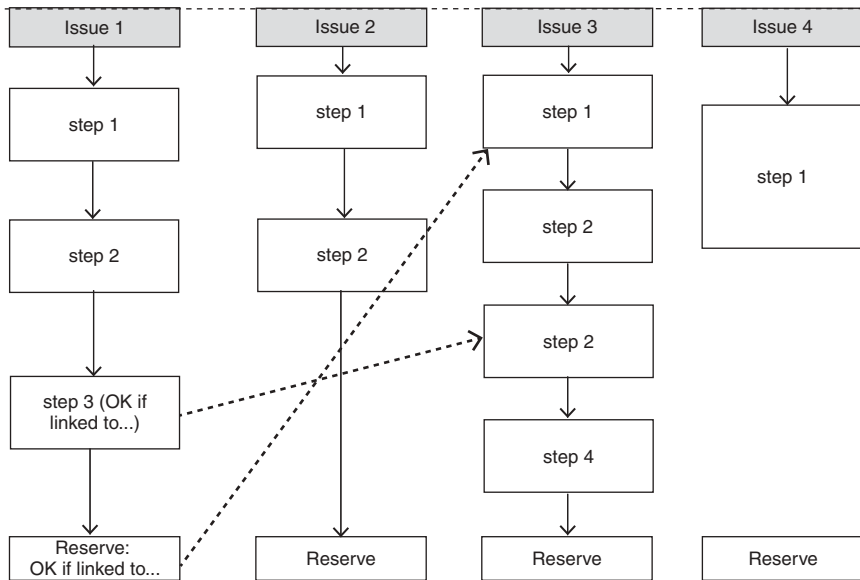


FIGURE A3.3 Reserve line planning

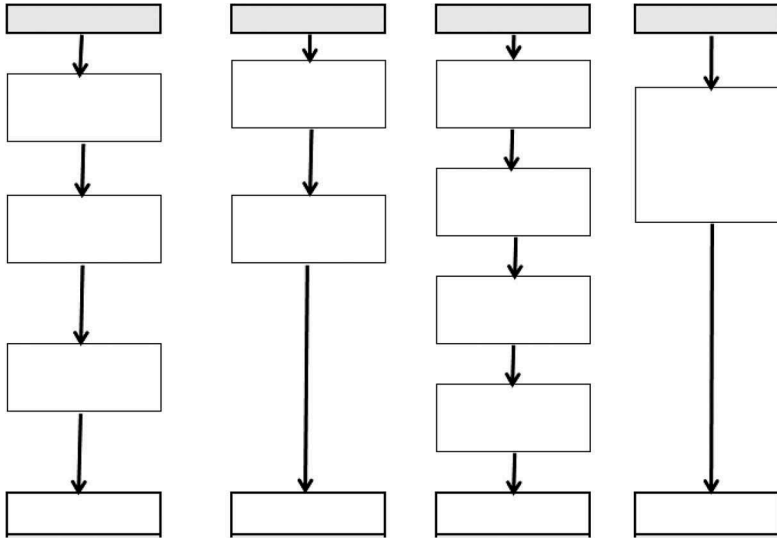


FIGURE A3.4 Reserve line planning, blank

### Backward planning

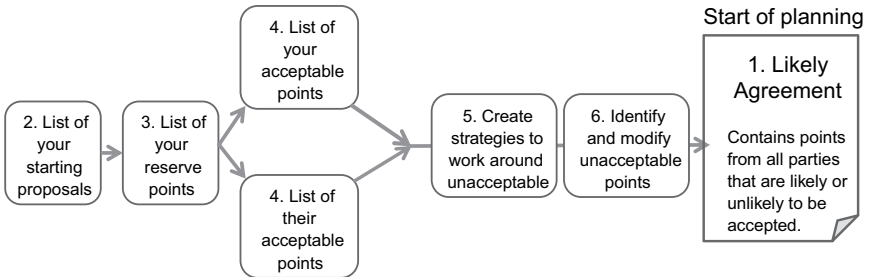


FIGURE A3.5 Backward planning

Source: Developed based on 3D Negotiation, Lax and Sebenius

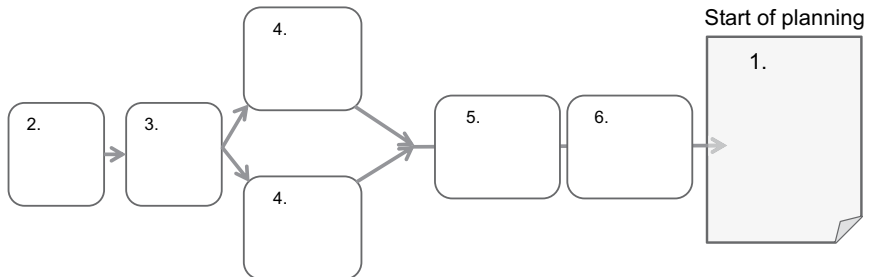


FIGURE A3.6 Backward planning, blank

Source: Developed based on 3D Negotiation, Lax and Sebenius



## Flowchart planning

This kind of chart takes some skill and practice to design, but it is very good for your planning.

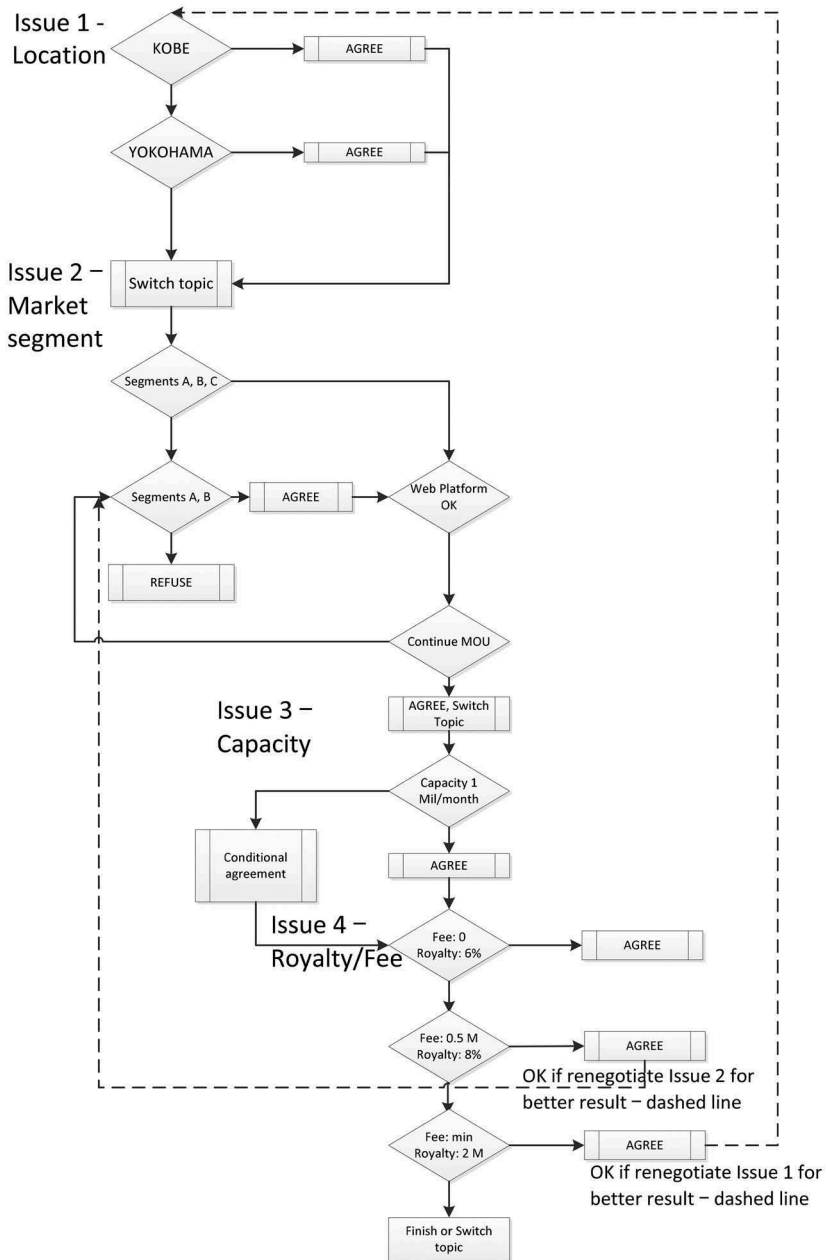


FIGURE A3.7 Flowchart planning





Diamonds show steps, the last one in a series is the reserve. Notes explain links among issues.

### Issues, steps, reserve, scorecard

This planning document (a modified Raiffa scorecard) helps you track the positions between your preferred (1) and least desirable (reserve) steps. You can include notes about linked issues or how to handle it in the negotiation.

**TABLE A3.4** Modified Raiffa scorecard

<i>Issue</i>	<i>Points (Max.)</i>	<i>Steps</i>	<i>Step Points</i>	<i>Linked issues</i>	<i>Notes</i>
Control of product	25	1. Control creation and design of all new products	25		
		2. Share creation of new products, but all must be organic	18	OK if we agree to relationship longer than 5 years	
		3. Agree that existing products will not change; no control of new products	10	OK if we get low price on investment funding and no limit on distribution	
Length of agreement	20	Agreed 5+ years exclusive cooperation	20		
		2 years exclusive cooperation	10		
		1 – 2 years, not exclusive	5	Must increase price	

Adapted from *Negotiation Analysis*, Raiffa, Richardson, and Metcalfe. (2002, p. 217).



# APPENDIX IV

## Cultural differences

This Appendix contains a few more cultural notes based on the research of Hall, Hofstede, Trompenaars and Hampden-Turner as well as others. None of these cultural differences can always and reliably be found in any culture; please refer to the discussion in Chapter 5 on culture and stereotyping.

Review of Chapter 5: culture and behavior expected at a national level does not always apply to individuals, therefore thinking that all people from one country will behave similarly is false.

Additionally, please consider that experienced negotiators from any specific culture may intentionally not react and behave like most people in their home culture.

### ***Showing emotions***

Generally, North Americans and most Europeans and people in the European language groups show their emotions more obviously than East Asians do; culture researchers call this being affective. Affective means that they are more likely to show by speaking or by body language that they are frustrated, satisfied, happy, uncomfortable etc. Although they show emotions easily, they may not be able to read emotions well!

### **Reading emotions**

Generally, the cultures of North America and Northern Europe, are “low context” which means they generally prefer to get information in the form of direct

words and phrases. Additionally, they may disregard or have difficulty reading facial expressions, tone of voice, and other body language.

The result is that “affective, low context” cultures communicate a lot of information unintentionally, but cannot read the same information as well from opposite cultures. Therefore East Asian negotiators may be able to clearly understand the feelings of counterparties from those cultures. But the North American and North Europeans may not be able to read the East Asian side.

### **Advantage for ...**

Unless one side is trying to deceive the other, there is no deep advantage. But there is a strong chance of miscommunication because North Americans and many Europeans will fail to understand the East Asian side. Therefore, the East Asian side should make their feelings about progress, satisfaction, likes, and dislikes clearly and explicitly known to negotiators from North America and Europe in general. How? They should try to put their feelings into words and they should try to use stronger body language with some cultures than they use inside their own culture. This process is called accommodating the other side. Do not try to completely accommodate negotiators from other cultures, but do try to be sensitive and a little bit accommodating as you communicate with them. Adjusting in small steps will help the mutual accommodation of all parties.

### **Too much cultural accommodation**

If both sides accommodate too much, no one will be able to correctly understand their words and body language. What to do? Accommodate a little, but not too much. Accommodate more as you become more familiar with local expectations and practices. When you are not sure, ask for information using simple sentences and get advice from individuals with high experience in your culture and the culture you are targeting.

### **Building trust across cultures in negotiation**

Jang and Chua (2011) identify a difficulty that negotiators face when dealing with parties from other cultures. The very behaviors that help you build trust in your culture may cause misunderstanding and mistrust with parties from other cultures. With people from your own cultural background, you know and can use the correct combinations of phrases, the right kind of eye contact, appropriate posture, and so on that lead towards trusting relationships. Your idea about this, or script of actions, might however lead to the wrong results with people from other backgrounds. In order to manage this process and to learn suitable approaches and scripts of action, Jang and Chua suggest active learning of Cultural Intelligence (CQ). You can learn more about CQ at [www.culturalq.com](http://www.culturalq.com).

**Time**

People from different cultures may understand time very differently. Most North Americans and many Europeans feel that time must be used “effectively to gain progress”. In negotiations, they may have limited time available and feel pressure to finish an agreement. Because of this pressure, inexperienced negotiators may give concessions when they get close to their deadline.

In many cases, negotiators with a more flexible idea of time have been able to win significant benefits from negotiators who panicked because of time limits. Experienced negotiators from any culture will not react to time pressure this way – they will manage to avoid time limits.

Consider this hypothetical conversation in Table A4.1 between a US negotiator (Smith) and one from Japan (Tanaka).

Let’s improve this conversation so that it becomes a positive event. If Tanaka has enough experience, he will know how to react to Smith. Please write in Table A4.2 what Tanaka should say and do.

**TABLE A4.1** Misunderstanding perceived value of time

<i>Conversation</i>	<i>Comments</i>
Smith: I can’t believe it, we have been talking about this all day with no conclusions!	This negotiator is showing his impatience. Within the US, this would be an easily understood signal that means: “Let’s stop wasting time and agree to some concrete details.” Outside this US, Smith’s words might be misunderstood in many ways.
Tanaka: I see. Can we discuss the part about marketing again?	This negotiator does not recognize the signal from Smith and continues with a slow process.
Smith: Why? We talked about it for 45 minutes! It’s clear that you don’t care about progress. That’s enough. Let’s move on to some solid numbers.	Smith gets even more upset.
Tanaka: Ok. Let’s move on to the related data. We should analyze this together. It will only take a few hours.	Tanaka seems to understand the need to move on. But he did not communicate his understanding to Smith. Worse, he suggested another long slow process.
Smith: No. Maybe we should not. I have to visit a company in Taiwan. I hear they like to do business fast. Good bye.	Smith has given up and run. Even if we consider Smith too impatient, this is a failure for <u>both</u> Smith and Tanaka.

**TABLE A4.2** Improved conversation about time

<i>Conversation</i>	<i>Comments</i>
Smith: I can't believe it, we have been talking about this all day with no conclusions!	This negotiator is showing his impatience.
Tanaka: I see. _____ _____ _____	
Smith: OK – I feel that “time is money”, but I am willing to discuss . . . .	Now Smith knows that Tanaka understands, and the relationship is not in danger of collapse.

# APPENDIX V

## Understanding failure

When a promising negotiation suddenly collapses we can clearly see that it has failed. When a negotiation results in a signed agreement and the work starts we can see that it has succeeded.

But perhaps those statements are not so simple and clear. Maybe that promising negotiation was not built on good ideas. Maybe that signed agreement was not designed well enough to survive when put into action. Consider these two ideas.

When negotiations built on bad ideas collapse, we can say it is a good outcome because no time was wasted trying to put an agreement into action.

When negotiations collapse after the work has started, we can say it is a terrible outcome because all the negotiation time and some of the resources committed have been wasted.

If we keep these ideas in mind, the quality of the ideas and the amount of time spent, we can get a picture of what failure means (Faure, 2012).

### **The meaning of failure**

Good ideas that fail in the negotiation process:

All the potential benefits are destroyed. If the failure occurs early in the process, the parties have lost a little time and few resources, but much potential benefit. This is a genuine failure and a loss for the parties.

Bad ideas that fail in the negotiation process:

Some resources and time have been lost in the process of arriving at the failure point. However, no potential resources have been lost in implementing

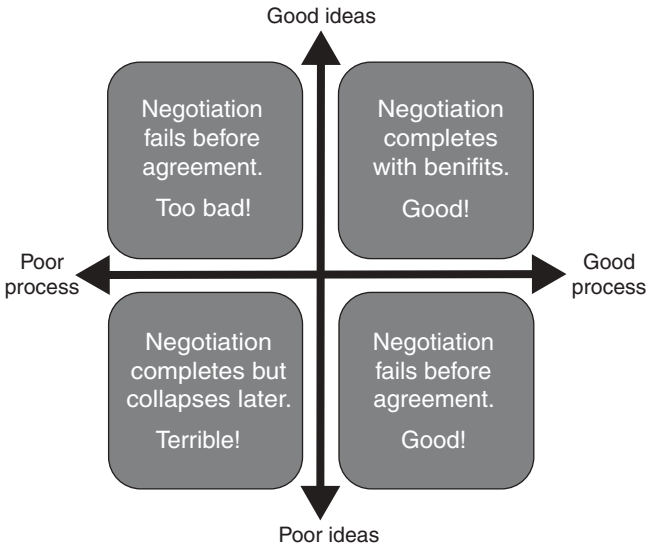


FIGURE A5.1 Failure matrix

a bad deal that would collapse later. Intangible losses such as damage to reputation are also limited. This is a “good” failure.

Bad ideas that complete in the negotiation process and fail later:

All the potential benefits are destroyed and all the resources committed and all the negotiation time has been wasted.

In Figure A5.1, “ideas” mean the merits, goals, solutions, creativity, and so on of the negotiation. “Process” refers to all the steps and activities of negotiating, agreeing, discovery, cooperation, and so on that the parties conduct. This graphic is not for deals that break up because the work after agreeing and ratifying is done badly, unless that badly done work was directly because of bad ideas or process.

Of course, good ideas can fail even after good process has led to agreement. In these cases, all the potential benefits are destroyed and all the resources spent have been wasted. This kind of failure can happen because of unexpected changes in regulation, the economy, staffing, suppliers, or other changes in the environment. It can also happen because the activities after the agreement are not done properly (poor execution of the agreement). A very well designed agreement might protect against most of those problems; that is why negotiators must take the challenge to learn to write good agreements and manage contracts well.

### Avoiding failure

If we want to avoid failure, we need to know how to prevent it and how to identify it and act against it. To prevent failure, we need to check at various points about the likelihood of problems. A first check should be at the earliest beginning



of the negotiation. At that time negotiators and decision makers should consider the overall environment around the business and the organizations while considering the stakeholders and their needs. At each new phase of the negotiation (see Figure 11.1) you, as a negotiator, should assess whether or not the negotiation is progressing well and whether or not the environment has changed (see Table 1 in Chapter 1). Also, within each phase you should sometimes assess whether or not the negotiation is progressing well regarding the relationships, goals, BATNAs, and interests of the parties. Continuing without reflecting increases the chance that you do not notice changes in the factors that are important to the discussion. Reflection is effective for finding and avoiding problems and requires little cost.

### Identifying failure mechanisms and their impacts

One way to consider failures is to start with the specific action of failure. Failure Mode Effects Analysis (FMEA) is used by engineers to understand how products or systems fail. We can use it to understand how negotiations fail. Usually, FMEA includes the thing that fails (failure mode), the severity of impact, the likelihood and frequency that it will happen, ways to detect the failure, and ways to manage it. For that reason, FMEA is a learning tool if used after a negotiation has finished. You can use it during the negotiation to help avoid and prevent failures. You can also use it before negotiating in order to identify potential problems. Table A5.1 is for use during the negotiation process. Notice that a failure mode may have more than one root cause. A few examples are provided in Table A5.1, but many more failure modes exist.

Faure (2012) lists seven types of relative failures:

- Tactical deadlock: a tactic intended to increase leverage and improve a position;
- Partial failure: some issues agreed, some issues cannot be agreed;
- Tactical non-implementation: one party intends to renegotiate some aspects, or reconsidering;
- Strategic defection: a party exits because its BATNA is better;
- Decision: agree to disagree, no expectation of agreement in foreseeable future;
- Breakoff: a party stops communicating and tries coercive methods;
- Smokescreen: the talks are merely a cover for other activity and there is no intent to agree.

We add one more type of failure:

- Misunderstanding: interactions stop because the parties are not able to understand each other easily. They may not realize that misunderstanding and miscommunication are the reasons for stopping.

**TABLE A5.1** Modified FMEA: During negotiation

<i>Failure mode</i>	<i>Failure effect(s)</i>	<i>Root cause</i>	<i>How to detect in advance or real time</i>	<i>How to handle</i>
Relationship damaged	Poor outcomes, delay, collapse	Miscommunication	Review quality of relationship frequently	Use integrative tactics, change staff, or use other approaches
Intransigence	Negotiation stops	Problems not solved	No acceptable solutions	Use problem-solving techniques together, bring experts and consultants
Intransigence	Negotiation stops	No ZOPA	No progress on the positions of the parties	NA
Collapse of Trust	Increased costs of negotiation and monitoring, possible collapse	Lies or misrepresentation occurred	Review of information, active search for new information	Rebuild trust through incremental steps and frequent successful interactions
New regulation with negative impact on business model (major change in environment)	Negotiation stops	Slow overall decision or interaction speed makes it possible for major changes to happen	Regular review of environment	Make deep changes to the business model or stop the negotiation entirely
New technology	Redesign of product or service, delay for review, collapse,	Parties did not keep up to date with technical changes	Strategic review of emerging technology	Design agreements for changing technology, integrate new technology
... other failure modes				

The above failure types can be considered using the FMEA table, or assessed in the overall context of the negotiation and relationships.

If we understand failure, we can understand success:

Negotiations that reach an agreement and that agreement is implemented at least so that the main elements are completed and the parties are generally satisfied.

In this definition, “main elements completed” leaves room for *successful* and *very successful* results; the same is true for “generally satisfied”. Further, success means that the parties are able to maintain a relationship that allows them to amicably join new negotiations in the future. It also means that there can be renegotiation and adjustment without complete failure.

# APPENDIX VI

## Stakeholder analysis

What is a stakeholder?

The Project Management Body of Knowledge (PMBOK) says that a stakeholder is “a person or organization that is actively involved in a project or whose interests are impacted by the execution or completion of a project.”

(Project Management Institute 2013, p. 376)

A person or organization that has an interest in the project or who could be impacted by it.

(Grisham 2010, p. 77)

The people and groups of people who have an interest in the operation and who may be influenced by, or influence, the operation’s activities.

(Slack, Brandon-Jones and Johnston, 2013)

### Central and peripheral stakeholders

It is useful to describe stakeholders based on how active or important they are to a project.

Figure A6.1 shows stakeholders that are central and peripheral to a negotiation course. Please consider who they are and why they are central or peripheral.

Are the lists complete? If not please identify stakeholders not included above.

Central	Peripheral
_____	_____
_____	_____
_____	_____

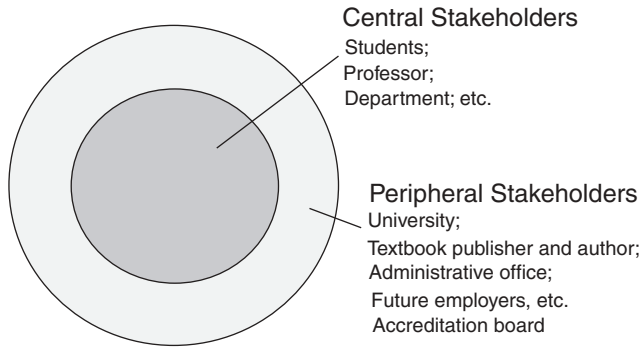


FIGURE A6.1 Central and peripheral stakeholders

A list of stakeholders should be as broad as possible. Are you a stakeholder in a bridge being built in your town? Probably yes, after all, you and your family pay taxes for that bridge and you or your visitors and suppliers may use that bridge.

With such a broad and open ended idea about stakeholders, we need to sort the stakeholders in other ways to better understand and react to them.

### Power/interest grid

How can we accurately identify some stakeholders as more or less important or powerful and thereby understand how the project manager should handle them?

The graph in Figure A6.2 provides a simple tool for assessing and managing stakeholders. See also page 249 of the PMBOK Guide, Figure 10.4, as well as other comments on analyzing and managing stakeholders, in Chapter 10 of PMBOK Guide.

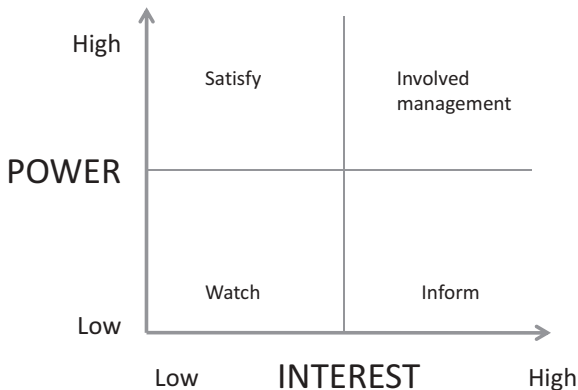


FIGURE A6.2 Power interest grid

## Warning – they may not stay in one place!

We have put stakeholders into categories: central, peripheral, high interest, low power, etc. But stakeholders are people, or groups of people, therefore they can change. A high interest stakeholder at the start of a project might retain power but lower their interest as the project develops. For example, a bank lending money to a contractor may strongly shape the timing, scale, and activities of the contractor. But most of that shaping will happen as the loan is being agreed to. Afterwards, the lending bank still retains power, however it is likely to lose interest and unlikely to use that power unless payments are late.

In another example, an environmental activist group may have low power until a project to build a new factory is underway. After the local residents see the earth-moving equipment, they may suddenly join the environmental activists helping to move the group from high interest/low power to high interest/high power.

The lesson is this: after you understand the stakeholders on all sides of a negotiation, you must regularly review your information and change your actions toward the stakeholders appropriately.

**TABLE A6.1** Stakeholder analysis blank

<i>Stakeholder (person, organ- ization, group)</i>	<i>Rights (What they should receive without doubt)</i>	<i>Responsibilities (What they should or must do)</i>	<i>Wants (What they want but do not absolutely need)</i>	<i>Needs (What they must get to be satisfied)</i>	<i>How to handle</i>
--	--	---	--	---	------------------------------

Below is an example based on the Shepard Fairey–Associated Press case found in Appendix II:

**TABLE A6.2** Stakeholder analysis example

<i>Stakeholder and issue</i>	<i>Rights</i>	<i>Respon- sibilities</i>	<i>Wants</i>	<i>Needs</i>	<i>How to handle</i>
Shepard Fairey	Ownership of changed image	Show reason- able evidence of creative work	Recognition and income	At least majority ownership of the artwork; not to be embarrassed in reputation Some profit	Distributive/ compete

(Continued)

TABLE A6.2 (Cont.)

Stakeholder and issue	Rights	Responsibilities	Wants	Needs	How to handle
	Some profit	Show clear, honest accounting	Avoid profit sharing		Distributive/ compete
	Freedom to create more	Transparency about component images	Avoid additional lawsuits about other artwork	Avoid future claims	Collaborate/ New value Creation
...other stakeholder					
...other stakeholder					

Source: used with the kind permission of Amar Ridha

*Practice:* Use the following case to complete Table A6.1. Answer the “How to handle” column from the point of view of a UK government official. Careful Internet searches will provide additional information.

**CASE A6.1: SENSITIVE FOREIGN INVESTMENT**

XMOS makes semiconductors, especially for the rapidly growing “Internet of Things”. XMOS had several corporate investors including Xilinx (USA) and Bosch (Germany) at that time. Huawei had been blocked one year before, in 2013, from some commercial activities and sales in the United States due to the sensitive nature of top performing equipment.

Making a point that Huawei was welcome to participate in this industry in the United Kingdom, the Prime Minister addressed the company in 2012. In 2014, Huawei, the Chinese electronics maker made an equity investment in XMOS, a UK technology company. The move puts Huawei ahead of competitors in Taiwan and moves them closer to equality with electronics makers from the US and Japan who already have a strong presence in UK.

1. Who are the stakeholders in this case?
2. What should be expected from them?
3. What can those stakeholders expect?

Use the stakeholder analysis table above to consider the parties and their interests.

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