

Legal Training – Session 3



By: LegalLogic Consulting

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A Workshop on Learning to Negotiate Agreements



What is Negotiation?

- A formal discussion between people who are trying to reach an agreement: an act of negotiating

-Merriam-Webster's Dictionary



Negotiation skills

- ❑ Punctuality
- ❑ Confidence
- ❑ Communication skills
- ❑ Smartness to handle discussions leading to arguments
- ❑ Body language
- ❑ Command over the language
- ❑ Professional demeanor
- ❑ Stay focused
- ❑ Maintain tone
- ❑ Do not sound rude
- ❑ Be polite



Preparing for Negotiations

- ❑ Knowledge of law, products, projects, services and offerings
- ❑ Learn as much as you can about counterpart
- ❑ Connect revenue with risk and know true cost and value of what you are negotiating
- ❑ Understanding clauses and risks
- ❑ Reading your templates
- ❑ Internal discussion with team before going for negotiation
- ❑ Co-ordination of team on the concall/meeting



Preparing for Negotiations

- ❑ Have negotiation positions/plans ready –
 - Plan A – try to delete clauses harmful to parties
 - Plan B – try to accept the clause with modifications
 - Plan C – accepting the clause by reducing worst possible risks
- ❑ Decide hold back clauses
- ❑ Identification of show stopper/crucial clauses



Preparing for Negotiations

- ❑ Be business minded. Collaborate with business partners ahead to:
 - Agree on goal of negotiation
 - Create an agenda or lists of priorities for “must have” items and those items you can compromise on
 - Discuss areas of common ground that can be achieved
 - Think through multitude of variables that may come up during negotiations and how to address them
 - Discuss long term implications of different positions that may come up
 - Understand what positions are standard in your industry
 - Discuss authority requirements needed to agree on certain positions

Opening Negotiations

□ Dilemmas

➤ Who goes first?

Do you let other side make opening proposal and run the risk they will control negotiations, or do you make first pitch?

➤ If you go first, where do you make the pitch?

Concern clauses, non negotiable clauses - how to handle

➤ Do you ask for what you want?

If you ask for what you want, you run the risk of the other party saying no, but if not, they're left guessing what you need

Key Negotiation Techniques

- ❑ During negotiation meetings – take notes
- ❑ After negotiation meetings – prepare minutes of meetings
- ❑ Circulate minutes of meetings with parties
- ❑ Negotiate item by item but don't concede any points until the end; then trade easy items first
- ❑ Prepare tabular format – what clauses are closed, on what clauses parties to come back
- ❑ Decide timelines for closing the negotiation
- ❑ Understanding commercials of the transaction
- ❑ Highlight legal issues with respect to commercials e.g. taxes, reimbursement, insurance etc.

Key Negotiation Techniques

- ❑ Giving practical examples/situations to prove our point
- ❑ Identify risks and perspective to convince other side
- ❑ Do not argue but discuss
- ❑ Try to close the contract considering stakeholder's interest
- ❑ Understanding your position in market
- ❑ Maneuver Around Personalities
- Overbearing attorney? Poor client control? Egos?
- Always remember that it's not personal, so remain calm and always take high road
- Don't give into threats or ultimatums

Aim high BUT expect resonable results

- ❑ Think of the best possible results for yourself
- ❑ Aim high but allow room for movement
- ❑ **Ask your way to success**
 - The future belong to the askers
 - Any price or any term is someone's guess (it's a bid)
 - Everything is being set by someone
 - Negotiate when the deal is conditionally agreed, not before
 - Discounts / Trade concessions - don't give them away (unless you trade off!)
- ❑ **Find a middle ground**
- ❑ **Bottom line / Walk away positions**

Negotiation Theories

- ❑ **Three Negotiation Styles** – know the styles to learn how to manage them
 - Competitive/Hard – participants as adversaries
 - win or lose mentality
 - concern for victory paramount
 - takes extreme positions
 - Cooperative/Soft – participants as friends
 - focuses on goal
 - concern for fairness & equity
 - avoids conflicts and wants amicable resolution

Negotiation Theories

- Collaborative/Principled – participants are problem-solvers
 - decide issues on merit
 - concern for maximum return on both sides
 - fair standards independent of individuals

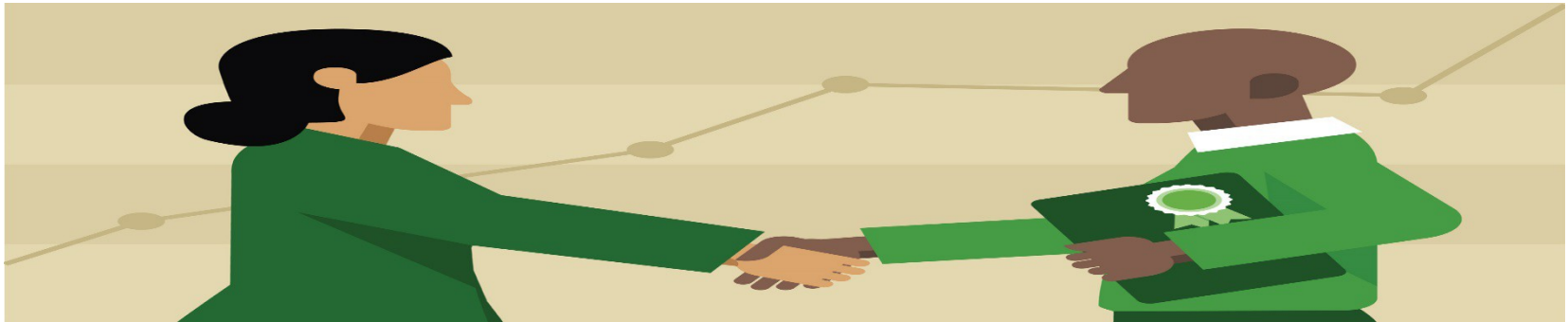


Negotiation Theories

“Getting to Yes” by Roger Fisher and William Ury – classic book on negotiation techniques

Key concepts:

- ☐ Don't Bargain over positions
- ☐ Separate People from the Problem
- ☐ Invent Options for Mutual Gain
- ☐ Know your BATNA (Best Alternative to a Negotiated Agreement)



Negotiation Theories

❑ Don't Bargain Over Positions

- This is when individuals take a position from the outset of a negotiation, such as “I will not pay more than Rs. 5,000 for this deal”
- Egos get involved here
- Invites stubbornness and stalls settlement
- Jeopardizes ongoing relationship

Negotiation Theories

❑ Separate People from the Problem

- Negotiators are people with baggage
- Although adversaries, parties can collaborate on solving the particular issue at hand
- Goal is not only to find resolution but to retain relationship
- In a commercial context, a negotiation should never be personal. However a person's *thinking* may be the problem
- Don't underestimate the value of face-saving and clear communication

Negotiation Theories

❏ Invent Options for Mutual Gain

- Understand motivation or interest
- Find multiple creative solutions – Invent before judging using the following approach:
 - Identify problem – zone in on shared interest
 - What is causing the problem
 - Possible strategies for solving problem
 - Specific steps to address problem
 - Make decision easy

Negotiation Do's and Don'ts

- ❑ **Do:**
- ❑ Master your negotiation style and learn to flex to others
- ❑ Remain focused on what's important
- ❑ Regroup with business counterparts after negotiation to reassess positions based on learned information
- ❑ Help define what success means – set realistic expectations
- ❑ Clearly ask for what you are seeking
- ❑ Develop trust through honest communication
- ❑ End on a positive note to link issues with solutions

Negotiation Do's and Don'ts

- ❑ **Don't:**
- ❑ Be unprepared
- ❑ Apologize
- ❑ Use language fillers like “um” or “uh” or weak intros like “I think...”
- ❑ Let perceived biases distract you
- ❑ Adopt a position and stick with it
- ❑ And finally, don't aspire to get just any deal; aspire to get a good deal!

Negotiations over the call

Preparations....

- ☐ Be punctual
- ☐ Bring everyone on same page.
- ☐ Refer contract name, version and date to be discussed
- ☐ Take print outs & Set the agenda at the beginning
- ☐ Be at a secluded place (no dogs, cell phones, TVs, cranky babies etc.)

On the call

- ☐ Engage in a small talk, share some info before getting down to business.
- ☐ Be affirmative, polite and talk sense
- ☐ Ensure to have a formal introduction round

Negotiations over the call

- ❑ List / Know the participant names and roles
- ❑ Use moderate tone, pitch, be slow and clear
- ❑ Candidly appreciate positions and predicament of other party
- ❑ Suggest any solutions or comfort language from other party perspective and draw attention to such language
- ❑ Emphasis more on reasonableness
- ❑ Listen actively and carefully before you react
- ❑ Be ready with the 'Plan B'
- ❑ MOM



Written Negotiations

- ❑ **They don't carry emotions, thus often likely to be misunderstood!**
- ❑ Requires additional clarity and precision
- ❑ Power of putting it in writing
- ✓ Speedy and efficient
- ✓ Shows person's seriousness
- ✓ People see something in writing, they believe it
- ✓ More expeditious
- ✓ More powerful (sometimes)
- ✓ Strong rationale, less chances of rejection
- ❑ Give a strong rationale when you disagree





Mock Negotiation Session





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