

Legal Training – Session 3



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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 reasonable 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

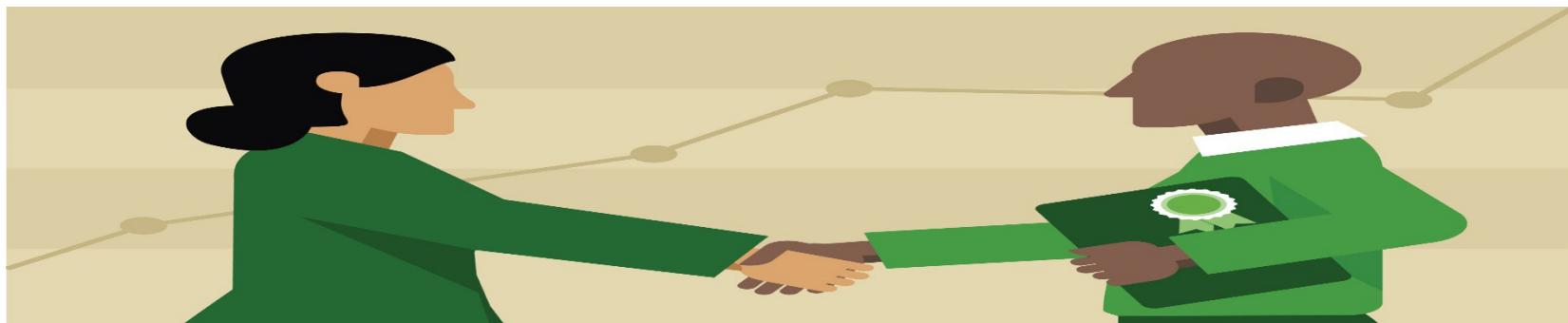


Negotiation Theories

“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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