Introduction

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♔I am a disputes lawyer in India. My practice focuses on commercial dispute resolution covering IP, construction, contracts in litigation and arbitrations.

♔I advise on complex negotiations.

♔I am licensed to practice law in New York and India

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An Example

♛ Your company ABC Ltd. wants to buy a 1000 kgs quantity of a material X from manufacturer XYZ Ltd.

♛ XYZ Ltd. agrees to supply 1000 kgs of material X but cannot supply all of it within one month. It says it can only supply 1000 kgs over next 6 months.

♛ But XYZ Ltd. says if it is paid ₹1,000 extra per kg, it can arrange to supply the material within one month.

♛ ABC insists it will only buy at agreed price and wants supply within one month itself.

♛ What happens next?

♔Story

♔Gary Killdall's CP/M was the dominant operating system for microcomputers.

♛IBM decided to get into personal computers in about 1980

♛They needed a ready operating system for their IBM-PC

♛Folklore has it that IBM and Kildall's team could not agree on a Non-Disclosure agreement while Kildall was flying his hobby plane.

Image Credit: Wikipedia

Image Credit: Wikipedia

- Story (Contd…)
- IBM then chose to negotiate with Microsoft, a tiny company that had a CP/M clone via Bill Gates' friend Tim Patterson called "QDOS"/86-DOS
- Gates offered only a license to IBM for DOS and few compilers for $700,000
- Microsoft made a deal with Patterson to license 86-DOS for a small fee and a royalty totaling to $25,000 and a clause to not disclose end-customers
- Read more details here: https://arstechnica.com/gadgets/2017/07/ibm-pc-history-part-2/

Outline

♔ **What are Negotiations?**

♔ **Why to Negotiate?**

♔ **How to Negotiate?**

♔ **Entrepreneurial Negotiations.**

♔ **Technology Deals**

What Are Negotiations?

Simply Stated

♚ Negotiations are a way to:

♚ Reach an agreement between parties,

♚ By persuading each other and

♚ Finding common ground for an agreement.

Negotiations Are All Around Us

♔ Business is a series of negotiations

♔ Look around and check:
- ♕ Salary negotiations
- ♕ Sales negotiations
- ♕ Investment negotiations
- ♕ Co-owner negotiations
- ♕ Team Negotiations
- ♕ Product Roadmap negotiations
- ♕ Resource negotiations
- ♕ Regulatory negotiations
- ♕ Supply Chain negotiations

♕ Industrial Labor Negotiations
♕ Board Room Level Negotiations
♕ Business Crisis Negotiations
♕ Merger & Acquisition Negotiations
♕ Business Closure Negotiations

Process

♚ Proposals are put across.

♛ Each side tries to persuade the other side to their view point.

♛ Areas of common agreement are found.

♛ Concessions are given and taken.

♛ Positions are changed dynamically in response to proposals.

♛ Short-term and long-term implications of a future agreement are constantly evaluated.

Why To Negotiate

TINA – There Is No Alternative

♔ Alternatives to negotiation are conflicts, confusion and chaos.

♔ There is really no alternative to negotiate.

♔ Refusal to negotiate is a common tactic to avoid resolution of disputes or a stepping stone to disputes.

Negotiations Are Approximate Optimizations

♚ Negotiations are not perfect solutions

♚ But they are 'Approximate Optimizations'

♚ They are approximate because of too many unknowns in the play.

New Outcomes

♔ Negotiations lead to new outcomes that neither party contemplated.

♔ Creative solutions that are outcomes of ideas exchanged.

♔ The process is iterative within the bounds of time limits, practical realities and expectations.

How To Negotiate?

Negotiating Without Knowing

♔ We negotiate without thinking

♔ Aimless negotiations:

    ♛ Leads to Non-optimized outcome.

    ♛ Distorted outcomes means losses,

    ♛ Bad relationships.

    ♛ Unallocated Losses.

Can It Be Better?

♔ Lot of academic research backed by empirical studies exist to improve negotiations.

♔ There are many ideas to adopt, skills to learn and lessons to apply.

♔ The range of problems to which negotiation theory has been applied range from family disputes, local governance, business deals to hostage negotiations.

Four Key Approaches

♚Howard Raiffa's et. al.'s Four Approaches:

  ♛ Decision Analysis

    ♞An Analytical approach – about how decisions could be made.

  ♛Behavioral Decision Making

    ♞How decisions are actually made

  ♛Game Theory

    ♞Smart individuals making separate but interactive decisions

  ♛Negotiation Analysis

    ♞Reasonable individuals making collaborative decisions

Classical Approach to Negotiations

♔ Human Behavior
 ♕ Transactional
 ♕ Behavioral
 ♕ Human Centric
 ♕ Exchanges

♔ Advantages
 ♕ More resilient with change
 ♕ Complexity is Accounted For

'FOTE' & 'POTE' Modes

♛ FOTE: Full, Open & Truthful Exchange.

♚ POTE: Partial, Open & Truthful Exchange.

Range of Tools

♔ The range of negotiation tools is wide.

♔ Problem is that some of them are very shallow ideas (e.g., "how to be hard knuckle negotiator?").

♔ Some of them are very sophisticated with analytical backing.

♔ Tools are available from from many fields like game theory, behavioral economics, psychology, decision analysis, etc.

♔ Picking the right tools to plan a negotiation itself is a bit of art behind some empirical science.

The Range of Tools
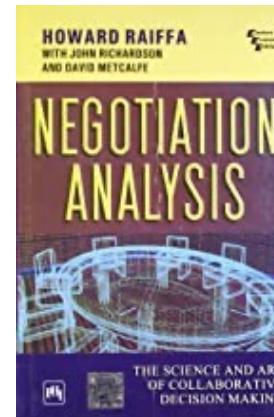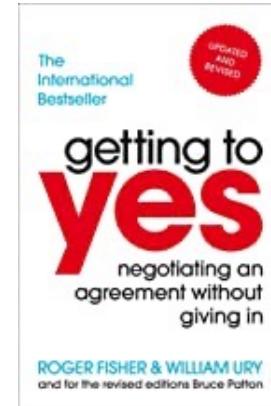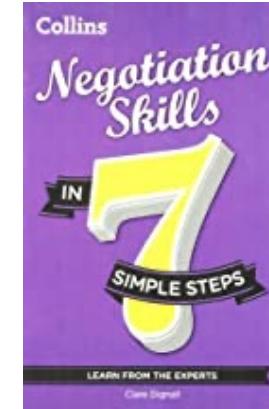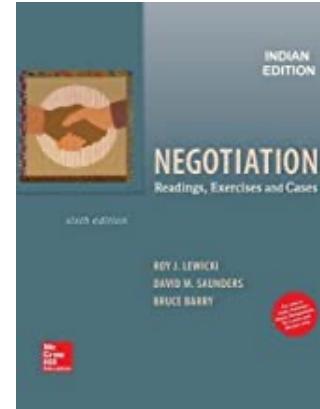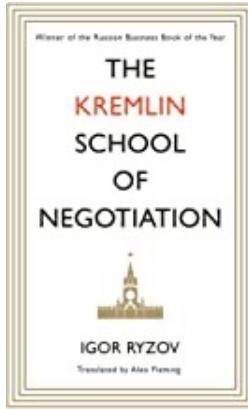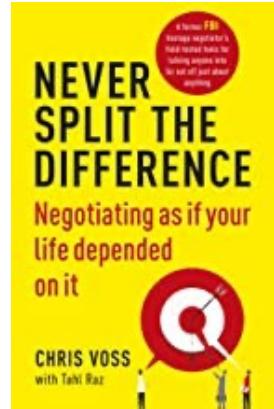
So Where To Start?

♚ Start with "Getting to Yes" by Fisher and Ury.

♛ It is written by pioneers in the field.

♛ There is narrative rigor though not much empirical data.

♛ But their biggest contribution is the "Principled Negotiation Framework"

♞ After explaining that positional bargaining is the worse way to negotiate, they give a simple framework

II THE METHOD

2. Separate the **People** from the Problem
3. Focus on **Interests,** Not Positions
4. Invent **Options** for Mutual Gain
5. Insist on Using Objective **Criteria**

Applying the method

♚ Consider this situation:

♚ Your company has ordered 10,000 units of raw material at ₹10 per unit from a supplier 'S'. S is the sole supplier of this material in India.

♛ S after booking your order, decided to sell the 10,000 units in stock that could be supplied to you to another customer who paid ₹15 per unit.

♚ You are mad at him and think of suing him. Before taking that noble step, you setup a meeting with S to negotiate a solution.

♚ How will you apply the "Principled Negotiation" framework to this problem?

Entrepreneurial Negotiations

Key Negotiations

♛ Investor Negotiations.

♛ Co-Founder Negotiations.

♛ Initial Customer Negotiations.

♛ Resource Allocation.

Investor Negotiations

♛ **Separate People From The Problem.**

♛ Investors have varied interests in investing in a company.

♛ Interests on each side are not simply profit.

♛ Can you as an entrepreneur step aside if the investor thinks you are not the best person to grow the company?

♛ Control and Strategy are always core issues.

♛ Investors and Entrepreneurs have some similar and other different interests.

♛ Examples.

Investor Negotiations

♔ **Focus on Interests Not Positions.**

♔ From product strategy to all other aspects, sticking to positions that are pre-investments doesn't work.

♔ Is your interest to be in control or to make profits?

♔ Can you separate company's interest from your own?

♔ Examples.

Investor Negotiations

♔ **Invent Options for Mutual Gain.**

♔ This is the hard part.

♔ At times, there may not optimum be any options available.

♔ It needs creativity and openness among parties to invent, evaluate and accept options for mutual gains.

♔ Gains may not be simultaneous.

♔ E.g., investor asks you to sell product technology for a lumpsum to a competitor while you think licensing it is a better option. Consider what options for mutual gain can you invent.

♔ Examples.

Investor Negotiations

♚ Insist on Using Objective Criteria

♚ Discounted Cash Flow (DCF) is not always the objective criteria – it presumes company remains a going concern!

♚ Sales or engagement numbers are a tricky criteria and frequent source of disputes.

♚ Examples.

Other Issues

♛ Multiple investor interests' clash.

♛ Multiparty negotiations.

♛ Tactics vs. Strategy in negotiations

Technology Deals

The Slicing Problem

♚ Technology is a hybrid aggregate, so it's not easy to slice and dissect it to monetize it

♚ It's easy to say that non-exclusive licenses retain maximum value for technology owner but not that easy to execute

♚ It is not an academic problem – deeply linked to market knowledge and relations with potential customers

♚ Any slicing of a technology across geographies, market scale (wholesale/retail), time periods, etc. need to be understood contextually with market knowledge.

Control

♔ Easy to lose control of a technology by a bad licensing deal.

♔ Policing-Audit clauses are very hard to implement.

♔ Post-licensing desire to control is usually problematic.

♔ Academic or Govt. Institutions may not want to give up control.

♔ Pay-and-sit-back are the cleanest deals.

♔ My preference is always for lump-sum deals.

♔ Recovering control post-licensing deal's end, is very hard.

Post-Licensing Developments

♚ One of the most tricky areas of licensing.

♚ How to control ownership of modifications and further improvements.

♚ Who owns the modifications and improvements done by licensee?

♚ Pricing and valuation of license to further development of technology post-licensing deal is another tricky area.

Academic Research Licensing

♛ Extremely challenging in India as most research is being done in public sector laboratories which finds its hard to do business with the outside world.

♛ Varying priorities of academic research makes it hard to build large licensing programs.

♛ Market oriented research and speed to productization.

♛ Hard to structure deals due to decision making structures.

Dispute Resolution

♔ Having a contract/license is a start.

♔ Enforcing contracts is expensive and time-consuming in India, hence build that into negotiations to make them dispute free by design.

♔ International litigation is very expensive.

♔ Terminating licenses should be last option because shutting down someone else's business will not be easy even if they continue using technology post-termination.

A Case-Study

The Problem

♚ X Co has developed a device to monitor health parameters.

♛ The device has to be inserted surgically in the body.

♛ The device is regulated by FDA.

♚ No human trials have yet taken place for the device as yet.

♛ The device includes hardware and software both. It cannot work without either.

X Co
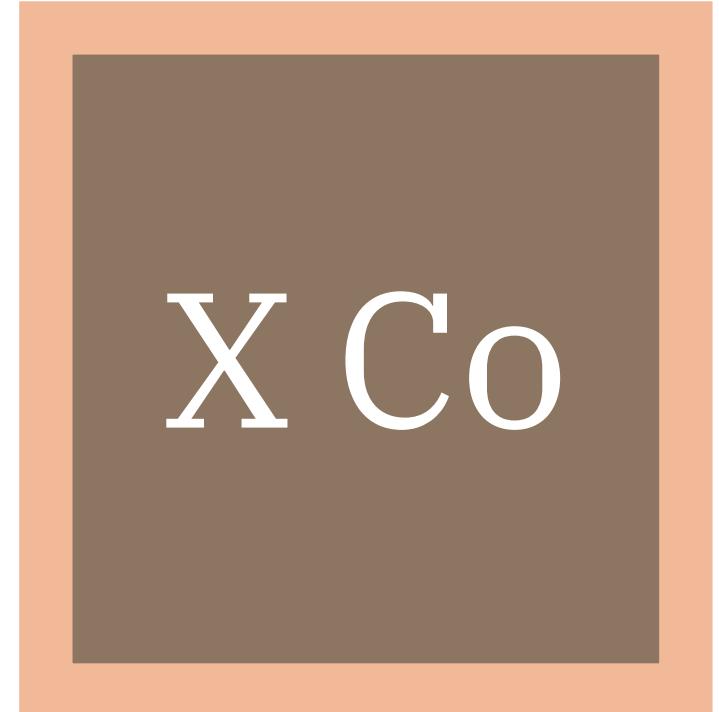
The Problem

♛ Y Co. is a large company in field of medical devices. It wishes to license X Co's device for a royalty of $100,000 per year for both hardware and software.

♛ Y Co. can actually develop software for X Co's device through it's internal team but its priority is to to get both hardware and software as a package license.
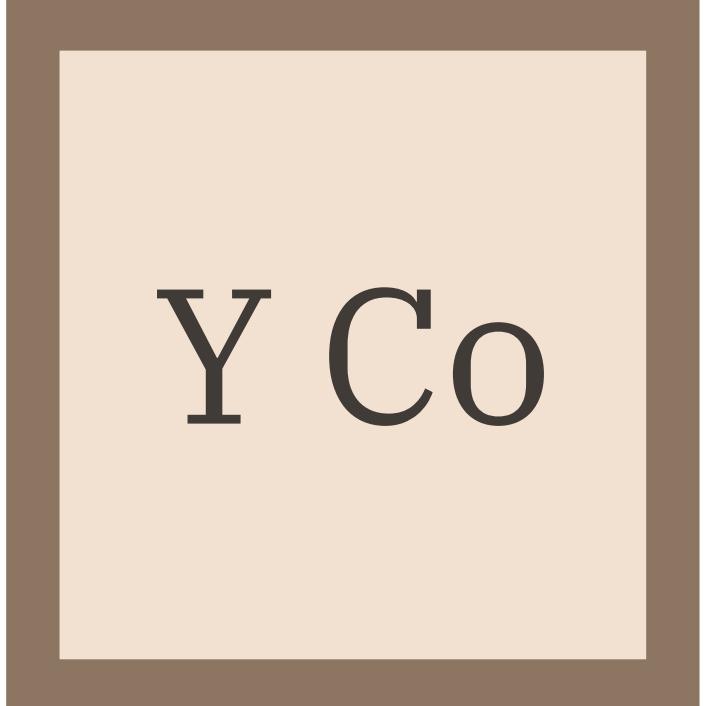
Y Co

The Meeting

♔ X Co's CEO flies down to Y Co's headquarters.

♚ X Co. offers a license for its device to Y Co at a price of $ 1 mil. per year for hardware and software along with future updates for five years.

♔ Y Co. only wishes to offer $100,000 per year as a one-time licensing fee and wants to further updates.
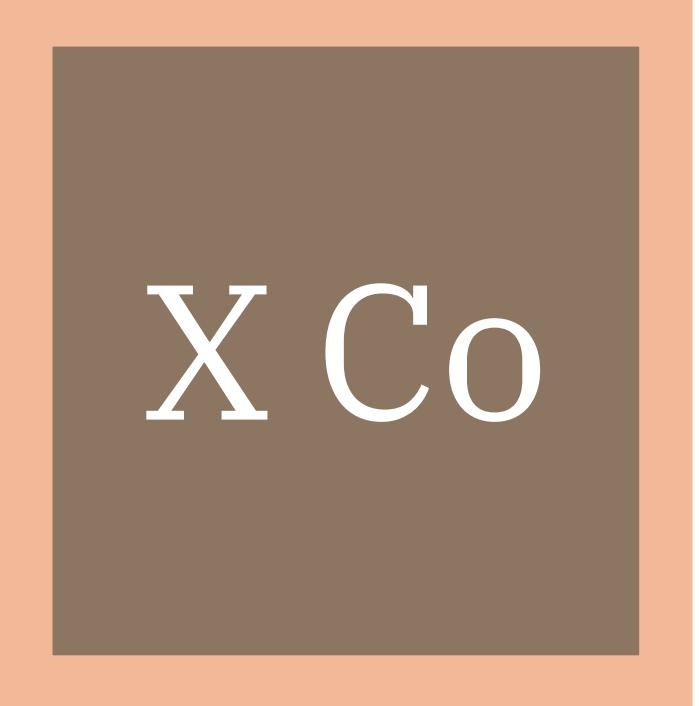
X Co

How To Negotiate Here?

From X's Co's Side

♔ Offer explanation why it expects $1 mil. in royalty?

    ♕ Offers from others as a guideline.

    ♕ Market size currently and expected market size.

    ♕ Market studies.

♔ Concessions

    ♕ Instead of flat $1 mil., offer a scaled revenue.

    ♕ Offer revenue sharing.

    ♕ Propose co-branding or white-labelling in return for lesser royalty.

From Y's Co's Side

♔ Offer explanation why it offers $100,000 in royalty.
  - ♛ Doesn't need software, has in-house capability to develop it.
  - ♛ Present it's own market sizing data.
  - ♛ It's cost of setting up a manufacturing line for this product.

♔ Concessions
  - ♛ Increase in royalty if source code is included.
  - ♛ Increase in royalty linked to FDA approvals at milestones.
  - ♛ Offer to invest in the X Co.

Thank You.
Questions?