

NEGOTIATION GUIDE

People do not realize it but we negotiate every day in multiple situations. Whenever a decision must be made, it's an exercise in negotiation. Which movie do we go see? What restaurant do we choose? However, negotiating the purchase of a car is distinct from going to the grocery store. When shopping for groceries, we take an item off the shelf, put it in our basket, and pay the sticker price at the cash register. There is no negotiation involved. Buying a stereo or TV, however, could involve negotiating the price or what is included (e.g., the warranty, delivery, installation). Similarly, getting a job and determining salary and employment conditions often involves negotiation. These situations do not have the same ramifications of a negotiation to buy a multi-million dollar business or property. The higher the stakes of the negotiation, the more thought and preparation that should be invested into the negotiation process.

BASIC NEGOTIATING CONCEPTS

Positions – Positions are “what” the negotiators say they want. They are really solutions that have been proposed by the negotiators. Positions are based upon the interests of the parties; interests are usually not disclosed, at least not in competitive negotiations. In most negotiations people take and then give up a series of positions. Behind every position lie many interests.

Interests – Interests are “why” the negotiators take the positions they do. Interests lie behind the positions of the negotiators. Interests represent the basic needs to be met. Money and price are not interests in themselves. Money represents purchasing power, the ability to satisfy other needs, status, or power itself. Understanding interests is the key to understanding “win-win” negotiating. In many negotiations, the interests are never explicitly discussed. In fact, interests are usually kept secret. Successful “win-win” negotiation requires finding a way to disclose interests without being taken advantage of.

Best Alternative to a Negotiated Agreement (BATNA) – BATNA is an acronym that represents the best result that a negotiator can get somewhere else if an agreement cannot be reached with the other party. In other words, a BATNA is the alternative that the party will select if they must walk away from the negotiation. If the negotiation involves finalizing a deal, the BATNA is to walk away to another party who can offer you a better deal. If, however, the negotiation involves a lawsuit, the BATNA is to go to court.

Bottom Line – The bottom line or reservation price is the position at which the negotiator will walk away from the negotiation. Relative to a purchaser, it is the highest price a purchaser is willing to pay for goods or services. Relative to a seller, it is the lowest price at which a seller is willing to sell the goods or services. The bottom line is also known as the “reservation price.” If the negotiator cannot get at least their bottom line in the negotiation, they will vote with their feet and walk away from the deal.

Zone of Agreement – The zone of agreement represents the difference between the bottom lines of the parties. If there is no overlap in the bottom lines of the parties, no agreement is possible.

TYPES OF NEGOTIATION: DISTRIBUTIVE OR INTEGRATIVE NEGOTIATION

Type 1: Distributive Negotiation

Distributive negotiation is also sometimes called positional or hard-bargaining negotiation. It tends to approach negotiation based on the model of haggling in a market. In a distributive negotiation, each side often adopts an extreme position, knowing that it will not be accepted, and then employs a combination of trickery, bluffing, and brinksmanship in order to give in as little as possible before reaching a deal. This is a “zero sum” negotiation where the negotiator claims as much of the ‘pie’ as possible. Usually there is just one issue for negotiation and more for one party means less for the other. Although the goals of the parties are in direct conflict, a negotiator can adopt either a competitive or cooperative negotiation style in a distributive bargaining situation.

Distributive Negotiation works best when:

A distributive negotiation strategy is generally appropriate where:

- Parties do not know each other very well
- Parties are unlikely to work together in the future
- Negotiation is over a limited number of things or issues (e.g., price only)

Negotiation Tactics and Techniques:

Early Anchoring: Anchoring is fixing or establishing the focus of discussion around a certain point, whether it is a figure, a range, or an issue, simply by asserting it. Early anchoring involves being the first party to make an offer that is beyond or at the fair margin of the range of credible or reasonable offers. This tactic has the effect of fixing the apparent bargaining range around this point, which is typically favourable to the person who anchors early.

Feinting: Misleading the other party as to your true interests or objectives by stressing goals or interests that are in fact unimportant to you and then giving them up for concessions from the other side that are important to you. Such feints help to disguise your true bottom line and interests.

Misleading Concession Pattern: It is common to make smaller and smaller concessions as negotiations converge on a negotiator’s bottom line. Knowing this, negotiators can mislead the other side by using a concession pattern that converges at a point above the actual bottom line. The other side, reading the concession pattern, may mistakenly conclude the conceiver has reached his/her bottom line and therefore settle in order to save the deal.

Splitting the Difference: When the parties are stuck at different positions, one solution is to each compromise half the difference. For example, with offers at \$600 and \$1000, the compromise would be \$800. This technique gives the “appearance” of fairness.

Ultimatum (i.e. Take It or Leave It): This occurs where a party claims to be submitting their final offer. The other side must take the offer or the negotiation is over. In reality, nothing prevents any party from making another offer at a later time.

Walkaway: This is a classic tactic in bazaars and markets. If you cannot get the price you want, walk away from the deal and maybe the other party will follow you. This tactic is a bluff. To work effectively, you have to be able to truly walk away from the deal and exercise your BATNA.

You Will Have To Do Better Than That (YWHTDBTT): If the other side is told “you will have to do better than that,” often, they will make you a better offer. Some people claim not to even consider the first offer. They just ask for a better offer, no matter what the first offer was. They assume that the person who made the offer made an excessive demand. This is a particularly useful technique when the other side anchors first, forcing them to re-anchor negotiations around a point closer to your own desired result.

Type 2: Integrative Negotiation

Integrative negotiation is also sometimes called interest-based or principled negotiation. It is a set of techniques that attempts to improve the quality and likelihood of “win-win” agreements with parties working together to increase the amount of resources to maximize mutual gain. While distributive negotiation assumes there is a fixed amount of value (i.e., a “fixed pie”) to be divided between the parties, integrative negotiation often attempts to create value in the course of the negotiation (i.e., “expand the pie”). Integrative bargaining often requires two or more issues so that trades can be made. The theory is that parties often have different underlying interests that can be integrated or reconciled to create joint gains that improve the situation of both parties. A negotiator can adopt either a competitive or cooperative negotiation style in an integrative bargaining situation.

Integrative Negotiation works best when:

An investigative negotiation strategy is appropriate where:

- Parties know each other
- Parties are likely to have further interactions in the future

Negotiation Tactics and Techniques

Focus on Interests not Positions: “Positions” are “what” negotiators say they want; “interests” are “why” they take the positions. The interests of the opposing party are discovered by asking questions and putting yourself in the other’s shoes. This creates an opportunity to devise solutions that address these underlying interests. Although problem-solving negotiators may be willing to disclose their interests, be aware that competitive negotiators will try to learn your interests without revealing their own in order to gain an advantage.

Expanding the Pie (i.e. Create Value): Sometimes it is possible to brainstorm and increase the resources to be bargained for. If the resources can be increased then perhaps both sides can get

what they want, or at least find a sufficiently satisfying alternative. For instance, a cell phone retailer may not decrease the price but might be willing to throw in voicemail and call display into a plan package for the same cost.

Open Information Exchange: This involves freely and honestly disclosing information to help the other side understand your underlying interests, objectives, and priorities. Sometimes something critical to one side is a minor concession to the other, and vice versa.

Log Rolling: If two or more issues are in dispute, the negotiators may be able to do a series of trade-offs. One side gets their top priority on the first issue and the other side gets their top priority on the second issue.

Objective Criteria: Instead of allowing the negotiation to be determined by a contest of power or to become a battle of wills, negotiators can select one or more objective criteria which can be used as standards for a 'fair' settlement (e.g., market price).

NEGOTIATING STYLES: COMPETITIVE OR COOPERATIVE

A negotiator can adopt either a competitive or cooperative negotiation style in both distributive and integrative bargaining situations.

1. Competitive Negotiation Style:

Competitive negotiators want to "beat" their opponents. They use high demands, threats, and make few concessions. They generally try to undermine their opponent's confidence and seek the maximum for themselves.

2. Cooperative Negotiation Style

Cooperative negotiators want to shift the nature of negotiations and "work with" their counterparts to make it more collaborative. Instead of moving from position to counter-position to compromise, negotiators try to identify their interests prior to the development of solutions. They use reasonable opening offers, show good faith, and initiate the exchange of mutual concessions. Once interests are identified, the negotiators then jointly develop a wide-ranging set of alternatives, and then choose the best alternative. Cooperative negotiators seek a fair and just settlement.

NEGOTIATING SCENARIOS

Test your negotiating tactic knowledge - For each of the following scenarios, identify what would be the most appropriate negotiation strategy (i.e., distributive or integrative) and style (i.e., competitive or cooperative), and identify two possible negotiation tactics that could be used in each scenario. Some scenarios may justify using either a distributive or integrative approach. Provide a short rationale for your choices in each column.

SCENARIO	NEGOTIATION TYPE	NEGOTIATION STYLE	NEGOTIATION TACTICS
1. Purchasing a souvenir from a street vendor while on vacation			
2. Couple deciding on which movie to watch at the theatre: one wants an action flick, the other a romantic comedy			
3. Consumer visits car dealership to buy a new car			
4. A married couple tries to decide where to spend their two-week vacation: one wants to go to the mountains, the other wants to go to the seashore			
5. Owner of rental car agency visits dealership to buy new cars			

SCENARIO	NEGOTIATION TYPE	NEGOTIATION STYLE	NEGOTIATION TACTICS
6. Two rural communities in discussions about using the only local water well			
7. Company needs to downsize and lay-off workers, but is uncertain about how many to lay-off from each of the different departments			
8. Renting a new apartment			
9. New parents deciding on who will wake up to feed the baby in the middle of the night			
10. Canadian rug seller wants to buy rugs from supplier in Turkey			

FOR MORE INFORMATION

If you have any questions arising from this guide or concerns which have not been addressed, please contact a lawyer in your area for consultation. You can locate a lawyer who deals with these matters by doing an internet search or by going to lsrs.lsuc.on.ca/lsrs/ or www.titleplus.ca.