

Negotiation Tactics for Artists

Alternative Dispute Resolution – Or: Getting to Yes

2014

That's what we will NOT do today

1. Be Prepared.
2. Negotiate With the Decision-makers
3. Get All Issues On the Table Before Compromising
4. Be Truthful
5. Listen and Look Carefully
6. Treat the Other Party With Respect
7. Be Sure Each Party Understands the Other
8. Understand Who Needs the Deal the Most
9. Be Prepared to Compromise.
10. Be Unemotional.

Intro – Starting the Wrong Way ...

In preparing for negotiations, people often focus merely on **tactical items** ...

- Should I put the first **number** on the table or wait for them to make the first offer?"
- "Should I negotiate on their **turf**, or insist that they appear on mine?"
- "Should I tell them what we really need, or should I include some **bargaining chips** that I can give away later?"

... whereby none of these questions can be intelligently answered without first developing a coherent **strategic framework** on a very different set of issues

...

- ... whether to
 - buy a new car,
 - sell a prosperous business,
 - settle a lawsuit,
 - avoid a strike,
 - ... or sell a painting ...



The 14 Basic Child Negotiation Skills

- Throw a tantrum



- Ask the person who's most inclined to say "yes"
- Play one side against the other
- Get sympathy
- Take your time
- Change the rules
- Solicit a bribe



- Wear the other side down
- Turn the negotiations into a game
- Act irrationally
- Worry the other side that you might be sick
- Make weak promises
- Win through cuteness
- Take your toys and go home




The Fog of War

The Fog of War: Eleven Lessons from the Life of Robert S. McNamara

- Empathize with your enemy
- Rationality will not save us
- There's something beyond one's self
- Maximize efficiency
- Proportionality should be a guideline in war
- Get the data
- Belief and seeing are often both wrong
- Be prepared to re-examine your reasoning
- In order to do good, you may have to engage in evil
- Never say never
- You can't change human nature



Key Questions in Negotiations

- 
- | | | |
|----|-----------|----------------------------------------------------------------------------------------------------------------------------------|
| 1. | BATNAs | <ul style="list-style-type: none">• What will the respective parties do if they don't come to agreement? |
| 2. | Parties | <ul style="list-style-type: none">• Who are the real parties in the negotiation? |
| 3. | Interests | <ul style="list-style-type: none">• What are their fundamental needs and priorities? |
| 4. | Value | <ul style="list-style-type: none">• How can value be created and who is likely to get it? |
| 5. | Barriers | What obstacles might prevent agreement (or maximization of joint value) and how can they be overcome? |
| 6. | Power | <ul style="list-style-type: none">• How can the various parties influence the negotiation process and its outcome? |
| 7. | Ethics | <ul style="list-style-type: none">• What is the right thing to do? |

Goal of a Negotiation



A good agreement is wise and efficient, ...

...and improves the parties' relationship

- Most negotiations take place in the **context of an ongoing relationship**
- In some cases the ongoing relationship may be more important than the outcome of any particular negotiation (e.g. long-time collector)

Positional Bargaining

- Arguing over positions
 - produces unwise agreements
 - is inefficient
 - endangers ongoing relationships

Wise Agreement

- **Meets legitimate interests** of each side
- **Resolves conflicting interests** fairly
- Is durable
- Takes **community interests** into account

- **Haggling over price**

Types of Negotiation Situations

Win-Win / Positive Sum

- Cooperative
- Integrative
- Principled

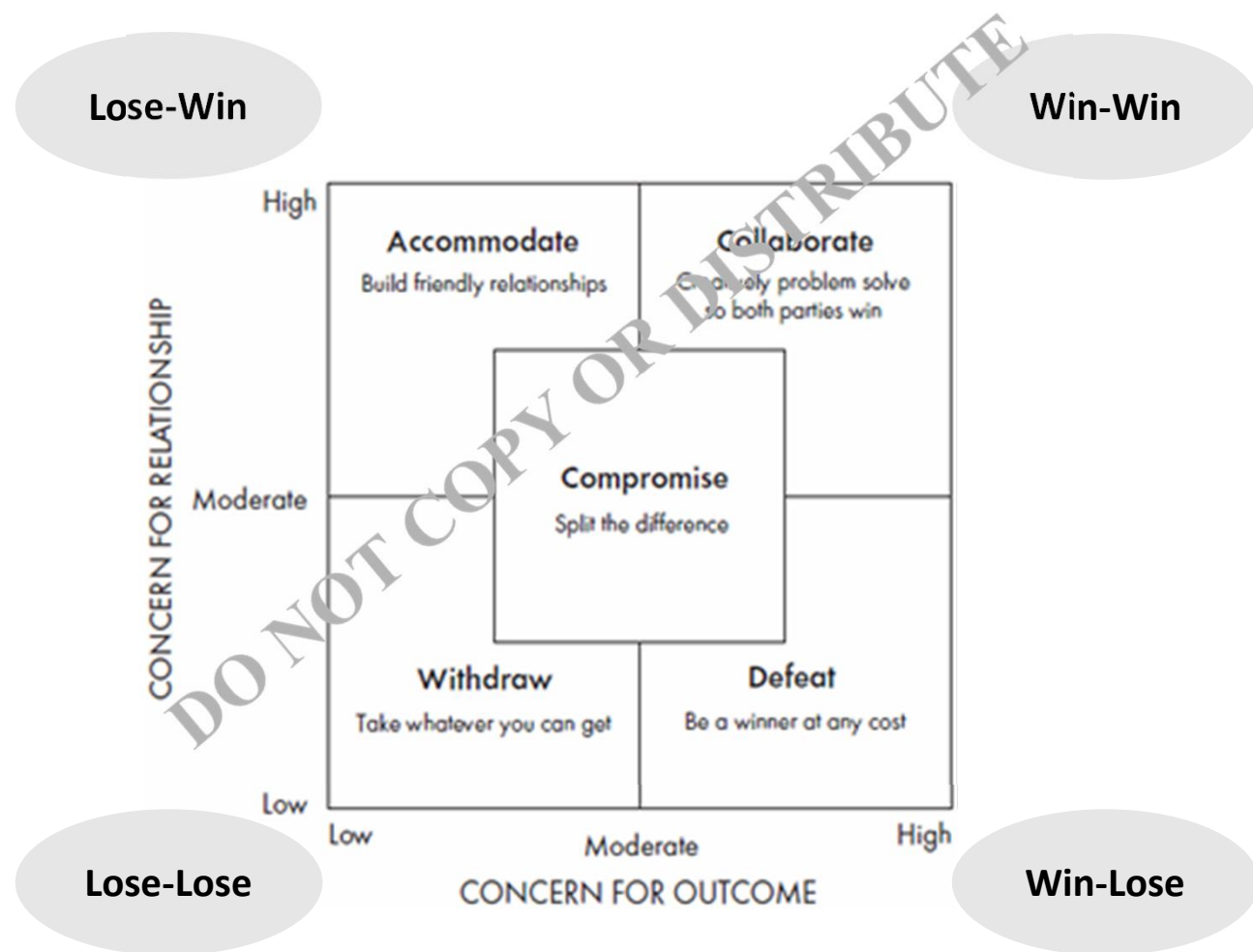


Win-Lose / Zero Sum

- Competitive
- Distributive
- Positional



... and More Types of Negotiation Situations

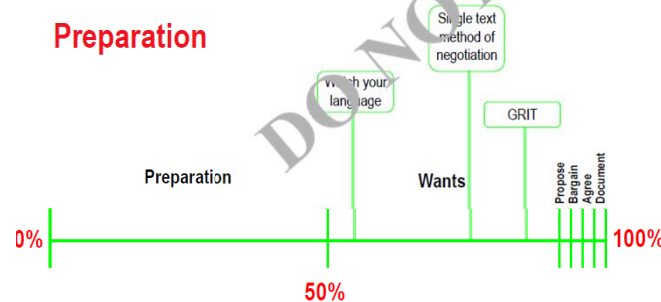


4 Principles of Negotiation

- **Separate people from the problem**
- Focus on **interests** rather than **positions**
- Generate a **variety of options** before settling on an agreement
- Insist **the agreement be based on objective criteria**

Options for Mutual Gain

- Brainstorm options by **listing** all **possibilities** first, ...
- ... **evaluating options** second
- Look for ways to meet everyone's interests at the same time



Objective Criteria to Guide Decisions

- What's been done before?
- What's "**fair**"
- **Joint search** for criteria
- Kick-off negotiations by agreeing on **standard** to be applied ...



What May be Counter-Intuitive ...



Fair standards and “fair” procedures ...

- Dividing a piece of cake
 - Flipping a coin
 - Drawing lots
 - Third party chooses
 - Last best offer arbitration
-
- Developing **objective criteria** ...
 - ... and keeping an open mind ...
 - ... may need to **shift** from substantive criteria **to procedural criteria** ...



Make the other's side decision an easy one ...

- Whose shoes?
 - Who do you want to influence?
- What decision?
 - Give rather an answer than a problem
- Threats are not enough
 - Understand how the other side will perceive the solution you suggest.
 - Put yourself in their shoes ...

Stages of Principled Negotiation

- **Analysis** of the situation or problem
 - What are the other party's **interests** and perceptions?
 - What are the existing **options**?
- Alternative **ways to respond** to the situation and the other parties
- Discuss the problem to **find a solution** to agree on



Positions

- Simple statements
- Only what you want
 - No reason, no justification
- Just a demand

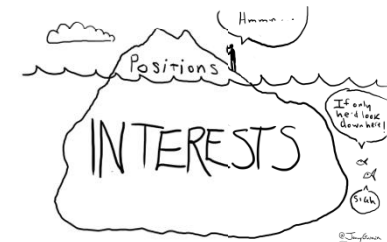
- I want the orange!



Interests

- The reasons underlying the position
- What you really want or need
- The answer to the question WHY

- I need the rind to **bake** a cake!
- I'm hungry - I want to **eat** the orange!



Focus on Interests, Not Problems ...

*“Your **position** is something you have decided upon. Your **interests** are what caused you to so decide”*

Fisher & Uri

- Ask
- Explain
- Look forward to solution - ... not back to blame
- Remain open



Interests - the silent movers behind positions - **define the problem**

- Needs
- Desires
- Concerns
- Fears

What are the **underlying interests of the other side?**

- The interests underlying a person's position are **often not clear**
- They may be **unexpressed** or **inconsistent** with their clearly stated position

The Open Window

“Want fresh air” vs “Don’t want a draft”
... Opening a window in the next room?

If You Want ...

... the other side to appreciate **your** interests, begin by demonstrating that you appreciate **theirs** ...

How to Identify Interests?

The Basic Questions ...

“Why?”

- Ask yourself that question
- Perhaps ask the other side

“Why Not?”

- What is the other side expecting me to ask?
- Why won't they give me what I want?

... with Each Side having Multiple (Human) Interests

- Peace / well-being / safety
- Security
- Recognition
- Economic well-being

Acknowledge their interests ...

... and order them by importance

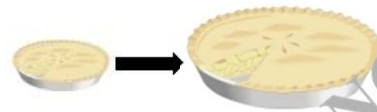
Put the problem **before** your answer

1. Your interests first
2. Your conclusions last

Options

Obstacles that **inhibit** creating options

- **Premature** decisions
- **Narrowing** options to find a single solution
- Looking for a **win-lose** solution
- The other side should solve the problem



Prescription for **inventing** options

- **Separate** the act of **inventing** options ...
- ... from the act of **judging** them
- **Broaden** the options on the table ...
- ... **rather than** look for a **single** answer
- Search for **mutual** gains
- Invent ways of making their decision **easy**

BATNA and ZOPA

BATNA

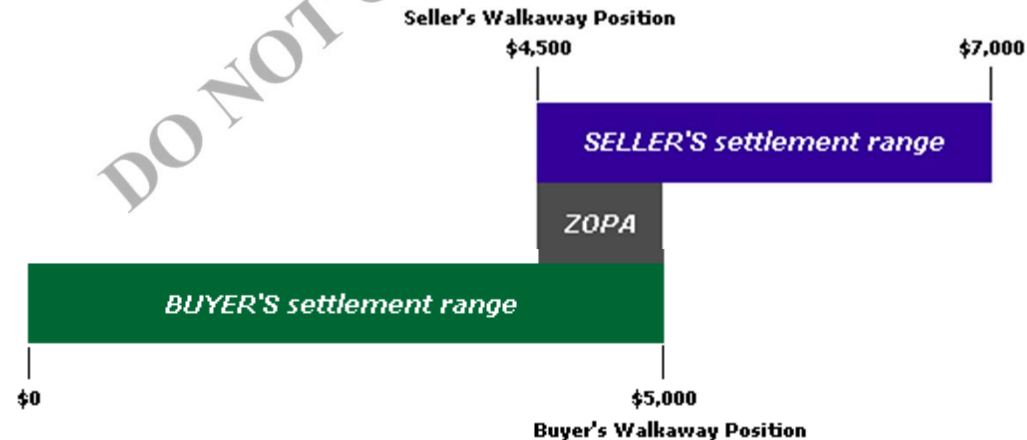
Best Alternative to a Negotiated Agreement

- It is what you can get **BY YOURSELF** if the other side is completely uncooperative
- What you should **agree** to ...
- ... and what you should **walk away** from
- Definition of **negotiating power**

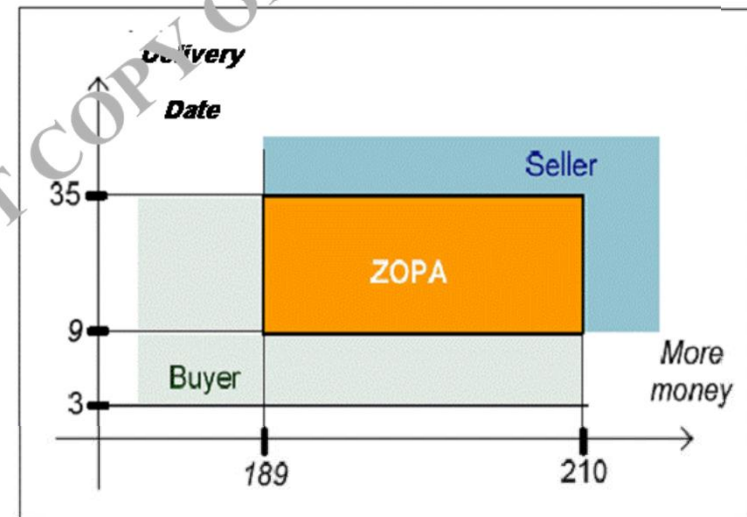
ZOPA

Zone of Possible Agreement

- “Common Ground”
- Shows win-win options and win-lose options
- Whether or not an agreement is possible

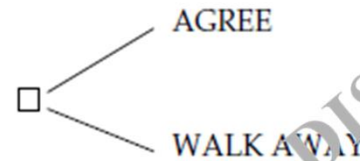


BATNA and ZOPA – Multidimensional ...



BATNA

What will the respective parties do if they don't come to agreement?



Situation:

- You have decided to sell a major work of your series of paintings
- A, a domestic collector, has already offered \$10,000 in cash ...
- ... but you are also negotiating with B, an well-known international foundation: its representative seems interested in closing a deal very soon

Alternatives:

- Accept A
- Wait
- If in a hurry, offer to B for \$ 12,000
- Accept an even lower offer from B to strengthen international reputation ...
- ... else?

BATNA (cont'd)

Your BATNA is not your bottom line

- Once your best alternative is identified, you have to put a **value** on it: Your “walkaway”
- A US\$ **price** is an important benchmark, **but other factors as well:**
 - **Ease** of consummating the deal
 - **Time** pressure
 - **Relationships** (both good and bad), and
 - Risk tolerance
- Walkaways should take into account **all of your interests, tangible and otherwise**

Sometimes you have an excellent BATNA

- You are negotiating with a prospective buyer after already getting an outstanding offer from another one ...

Sometimes your BATNA can be terrible

- If you were trying to get a hotel room on a busy holiday weekend ahead of your vernissage, with your kids carsick from too much fast-food and your over-heated engine spewing radiator coolant ...

BATNA (cont'd)

Assessing BATNAs and walkaways - your own and those of other parties - involves both science and art ...

- Science: **Decision analysis** and micro-economics ...
- Art: Imagining **creative alternatives** and weighing their **relative value**

- Most people are not very good at evaluating BATNAs ...
 - ... over-optimism, such as in lawsuits that you are in the right and will win ...

- Only by considering the perceived **BATNAs of both the potential buyer and seller** can one see if:
 1. An agreement is really possible—and, if so, ...
 2. ... whether there is a lot of room to bargain or just a little

... entering the ZOPA ...

ZOPA

Assume there would be a bargaining range from \$10,000 to \$13,000 ...

- Any price between those two figures leaves both parties better off than no deal
- On the other hand, there is no “correct” figure or equilibrium
 - If each party knew the other’s walkaway price, social ritual might lead them to split the difference ...

In **practice**, it is **hard** for negotiators to have an accurate picture of the ZOPA

- **Reading of the other side’s walkaway is usually imperfect** at best ...
 - ... with general **market conditions** maybe providing some clues
- The **behavior of the other party** should be taken into account ...
 - Apparent interest in making a deal
 - Pattern of offers and concessions
- ... **but such information is almost always incomplete** and subject to interpretation ...

ZOPA (cont'd)

Offers and counteroffers as a way of testing the true dimensions of the ZOPA

... and shaping the perceptions of the other side – embedding real **risks**

- Parties are too **coy**: May fail to come to agreement, not realizing that a ZOPA exists ...
- Single-minded **focus** on price may blind them for value creation opportunities

Ideally understand how the other party views its own alternatives in the early stages of a negotiation ...
... as well as your own

- Can be a time-consuming and frustrating process, if each party is guarded about revealing information ...

- Ideally, evaluate your BATNA options **before** negotiation begins
- **Circumstances change** during the bargaining process, so assessments must be regularly updated

It is easy to fall into the **trap of how the other party *should* see its BATNA**, instead of how it really does

- ... particularly true in disputes where self-serving biases can come into play

Parties

Who are the real parties in the negotiation?

- ... as there may be influential players who are not immediately visible at the bargaining table
- **Confirm the authority** of the who you are negotiating with
 - Can a representative make a binding commitment, ...
 - ... or will a provisional deal have to go through endless levels of review
 - Cancellation fee in the provisional agreement?
 - (Is financing avail?)

Situation:

- If you negotiate with an agent, he / she is probably the wrong person
- After a price has been hammered out, you may be surprised when the agent says that he has to get the deal approved by the collector / foundation

Rationale:

- The agent is supposed to build a relationship with you, get you softened up and psychologically committed to selling a particular piece of art
- Agent more focused on discovering the dollar that an artist will sell ...
- ... with the resulting **asymmetry** very much in the collector's favor

Interests

What are the interests and priorities of the key parties?



- Many negotiators fail to ask that, even of themselves ...
- Failure to probe for underlying interests sometimes reflects a lack of insight, an unwillingness to test one's own **assumptions**, or to question "your **policy**"
- Can also be a consequence of the bargaining process
 - Negotiators also are often **cautious** about revealing their interests, fearful of being exploited if they expose their real needs
 - On the other hand, if negotiators lose sight of their interests or misstate them, they have little chance of maximizing the potential value of their deals ... they may foreclose agreement entirely

Situation – You:

- You may say that your interest is simply to maximize the cash price
- Likewise, you might want to balance near-term needs for liquidity against long-term (price) appreciation
- How much risk you should take on and in what form, particularly if going exclusive with a specific gallery

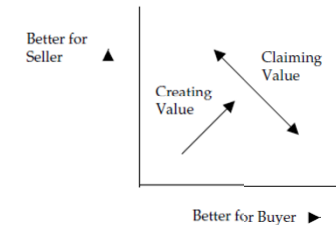
Situation – The Other Side:

- Timing might be important to the buyer, for example
- Depending on budget decisions, it might want to book this particular purchase in this year
- Within a gallery context to retain you for a transition period or to ensure long-term partnership

Value

How can value be created—and who will get it?

- ... though the potential for value creation ultimately depends on **how** the other parties' **interests compare with your own** ...
- ... whereby rarely are the interests of other stakeholders entirely clear or - even as revealed in negotiation – may not be perfectly understood
- It is a **mistake to assume negotiations to be win-lose** ...
- ... **but** it is **also** wrong to see them simply in **win-win** terms



Situation:

- Parties may bargain hard on the % fee for the gallerist
- If too stubborn, they may forfeit potential gain and even jeopardize the entire agreement
- But: Being naïve is not the answer either, as that allows the other party to capture all the value ...

Lesson:

- Negotiators thus must “**manage the tension between creating and claiming value**”
- Creating value usually requires revelation of information and brainstorming ...
- ... yet such disclosure can sometimes be exploited, particularly if it is about one's critical needs or the lack of good alternatives

Barriers

What obstacles might prevent agreement (or the maximization of value) and how can they be overcome?

- The existence of a ZOPA and opportunities for joint gain do not guarantee agreement, as several formidable barriers may stand in the way

Strategic behavior: Overplaying one's hands

- You may be privately willing to accept an \$18,000 offer, but hold out, hoping the buyer will increase his bid.
- In fact, that figure may be the buyer's upper limit
- When the customer walks out, frustrated, both parties lose a potentially desirable deal

Bargain tactics: Lacking a firm final line

- If hard for either to concede and / or haggling too much about the % fee for the gallerist they may forfeit mutual gains
- But, if one concedes too readily, he will see little of the benefit
- Drawing a firm line on what is acceptable may increase chances for a fair share, but involves the risk that your demand will exceed what the other party is willing to accept

Barriers (cont'd)

Emotions can run high in negotiations ...

- It is the nature of negotiation that you never completely control your own destiny
- People - standing in the way of something that you need - may be regarded as **opponents**
 - Such attitudes can breed defensiveness, even hostility
- **Feelings** can easily escalate to a point where everyone loses sight of their substantive objectives
 - Interpersonal obstacles are best addressed through a disciplined negotiation process

Institutional obstacles

- Imaginative ways of tailoring a deal may run afoul of **policy** ...
 - Also, legal constraints may inhibit value creation, as well.

Power

How can the various parties influence the negotiation process and its outcomes?

- Bargaining power is sometimes assumed to be simply the strength or weakness of your BATNA
 - Having an attractive BATNA will give you little advantage at the bargaining table unless other parties are convinced that you really are prepared to walk away
 - Conversely, there is power in convincing the other parties that you will wait forever to get the terms that you want
- **Negotiation skill** includes a whole range of talents, from strategic vision and creativity to persuasiveness and self-confidence...

Example 1:

- Having a wonderful offer in your pocket is great, ...
- ... but it won't make other prospective buyers pay you more than they believe you are worth
- **A good BATNA simply insures you against having to accept too little**

Example 2:

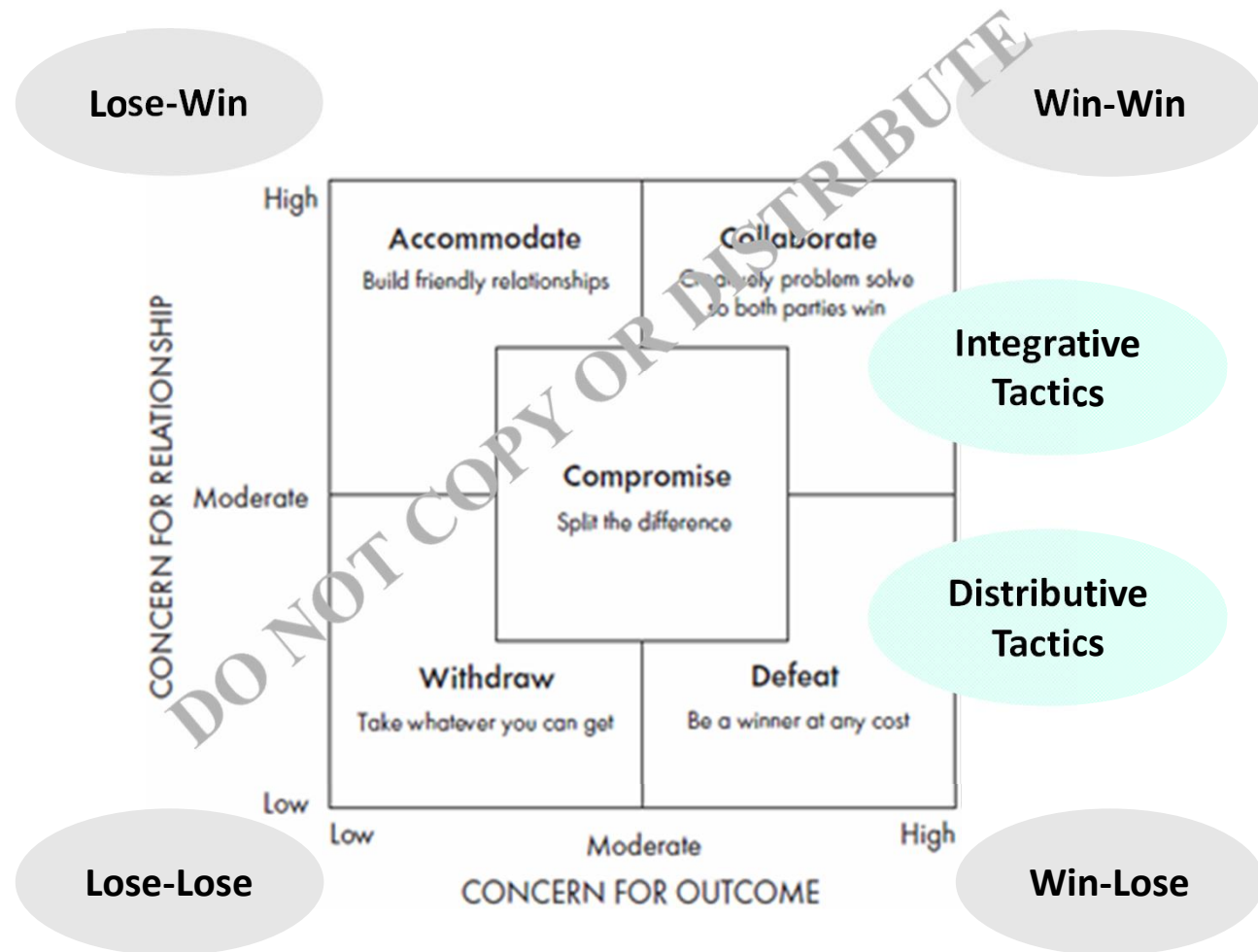
- Having a poor walkaway doesn't necessarily mean that you are in a weak bargaining position
- The other side may not know that you have few options, and in any event, it may prize what you have to offer
- **How the other side perceives its own BATNA may have more bearing on your power than how you see your own**

Ethics

What is the right thing to do?

- What do you owe other parties in the way of candor?
 - “Now honestly, what’s the absolute top dollar you are willing to accept ...”
- **Fairness:** Does it matter who gets what share of the pie?
- Potential use of **force**: It is illegal to demand money by putting a gun to a person’s head, but is the same true of applying economic pressure?
- Impact of negotiation on **bystanders**: Are you obliged to think about how it will affect people who are not at the bargaining table?

Negotiation Tactics



Distributive and Integrative Negotiation Strategies

Distributive

- É Maintain inscrutable (or hostile) demeanor
- É Bargain on your own turf
- É Winning is goal, relationship is secondary

- É Attack their personality
- É Use humor at their expense
- É Avoid discussing principles—your principle is to win



Integrative

- Be professional and pleasant as possible
- Seek neutral turf
- Build trust for good long-term relationship

- Discuss issues, not personalities
- Use self-deprecating humor
- Seek agreement on guiding principles

Distributive and Integrative Negotiation Strategies (cont'd)

Distributive

- É Hide your interests
- É Ignore their interests
- É Focus on your position
- É Talk about your rights

- É Conceal relevant info as much as possible
- É (Dissemble, mislead, i.e. if necessary)
- É Be unpredictable, try to rattle the other side
- É Take extreme positions
- É Hold your position tenaciously



Integrative

- Describe your interests
- Use active listening to determine their interests
- Bargain in terms of interests
- Talk about problem solving

- Share info; it helps to expand the pie
- Be truthful
- Be consistent, reliable.
- Seek reasonable possibilities
- Make reasonable accommodations

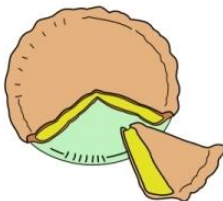
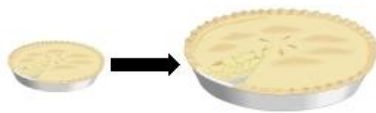
When to use what?

Integrative bargaining is best when

- There is a possibility of “expanding the pie”
- When the agenda and the relationship are important
- When this is a recurring relationship or event
- When you don’t have a good “BATNA”

But: ... **Distributive bargaining** is best when

- There is no possibility of “expanding the pie”
- When you need to get your way/as much as possible
- When the agenda is much more important than the relationship
- When this is a one-time event
- When you have a good “BATNA”



Distributive and Integrative Bargaining are not mutually exclusive

- Eventually even expanded pies have to be divided
- A form of **distributive bargaining** is the last step of an integrative approach

Negotiating Styles

Soft Style

- Participants are friends
- Goal is agreement
- Make concessions to cultivate relationship
- Soft on people and problem
- Trust others
- Change your position easily
- Make offers
- Disclose your bottom line
- Accept one-sided losses
- Insist on agreement
- Avoid contest of will
- Yield to pressure



Hard Style

- Participants are **adversaries**
- Goal is **victory**
- Demand **concessions** as condition of relationship
- **Hard** on people and problem
- **Distrust** others
- **Dig in** to your position
- Make **threats**
- **Mislead** as to your bottom line
- Demand **one-sided gains**
- Search for **single answer** you will accept
- Insist on **your position**
- Try to **win** contest of will
- Apply **pressure**

Hard, Soft, Principled Negotiation

Soft



Hard



Principled

- Participants are friends
- The goal is agreement
- Make concessions to cultivate the relationship
- Be soft on the problem and the people

- Participants are adversaries
- The goal is victory
- Demand concessions as a condition of the relationship
- Be hard on the people and the problem

- Participants are problem solvers
- The goal is a wise outcome reached efficiently and amicably
- Separate the people from the problem
- Be soft on the people, hard on the problem

Hard, Soft, Principled Negotiation (cont'd)

Soft	↔	Hard	↔	Principled
<ul style="list-style-type: none"> • Trust others • Change your position easily • Make offers • Disclose your bottom line • Accept one-sided losses to reach agreement • Search for the single answer: The one they will accept • Insist on agreement 		<ul style="list-style-type: none"> • Distrust others • Dig into your position • Make threats • Mislead as your bottom line • Demand one-sided gains as the price of an agreement • Search for the single answer: The one you will accept • Insist on your position 		<ul style="list-style-type: none"> • Proceed independent of others • Focus on interests, not positions • Explore interests • Avoid having a bottom line • Invest options for mutual gain • Develop multiple options to choose from; decide later • Insist on using objective criteria

Hard, Soft, Principled Negotiation (cont'd)

Soft



Hard



Principled

- Try to avoid a contest of will
- Yield to pressure

- Try to win a contest of will
- Apply pressure

- Try to reach a result based on standards of independent will
- Reason and be open to reasons; yield to principle, not pressure

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Separate People from Problem

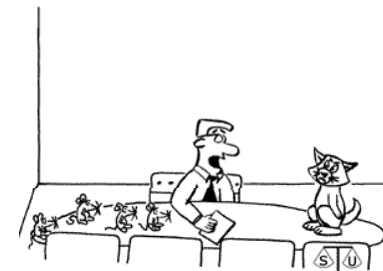
- Negotiators are people first
- Negotiator interested in:
 1. Substance
 2. Relationship
- Positions become entangled with the relationship

- Many **impasses** are due to our tendency to think **about our positions not our interests**

Prevention works best

- Build a **working relationship**
 - Arrive early, stick around afterwards
 - Try to get to know other party
- **Face the problem**, not the people
 - Two sailors in a lifeboat

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Meeting my clients half way sounds good.
Eating half my clients does not.

Separate People from Problem

Perceptions

Emotions

Communication
Problems



Solving People Problems

Perceptions

- Conflict exists in people's heads
- Put yourself in their shoes
- Don't blame them for your problem ...
- ... instead discuss each other's perceptions
- Give them a stake in the outcome
- Face-saving

**The more involved in the process ...
... the more likely they will support the outcome**

Emotions

- Acknowledge them and try to understand their source
- Defuse strong emotions
- Allow other side to let off steam
- Don't react to emotional outbursts
- React calmly—apologize if need be
- Use symbolic gestures

Communication Prob's

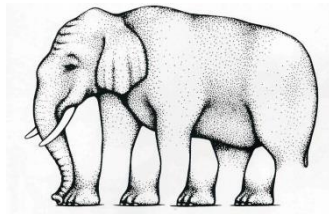
- Parties are not talking to each other
- Not hearing the other side
- Misunderstanding

Solutions to Problems

- Speak to be understood
- Speak about yourself, not them
- Speak for a purpose

In general, people problems can be avoided by having a good relationship / partners

Perceptions



General

- Parties may agree as to the facts ... - but **disagree on the preferred outcome**
- See the situation as the other side sees it
- **Understanding the other side's point of view** is not the same as agreeing with it ...

Don't

- **Blaming** is usually counterproductive – even if justified ...
- **Don't imply their intentions from your fears** – as putting the worst interpretation on what the other side says or does ...
- Also concerns of the other side perceived as not standing in the way of an agreement are important ...

Do

- Discuss each other's perceptions
- Look for opportunities to act inconsistently with their preconceptions
- Involve the other side: Agreement is much easier if both sides feel ownership of the ideas/solutions



- **Allow all parties to save-face:** A potentially acceptable solution may be rejected if a party is forced to lose face in the process
- Face-saving reflects a person's need to reconcile the stand he or she takes in a negotiation or an agreement with their principles and their past words and deeds

Emotions

General

- Emotions often run high from the start
- Emotions can create an **impasse**
- **Recognize** your emotions and those of the other side



Don't

- Don't treat negotiators who represent organizations as mouthpieces without emotions
- Don't react to emotional outbursts
- Don't stop people from expressing their emotions or dismiss their emotions

Do

- Make emotions explicit and acknowledge them as legitimate
- Continue listening when the other side is letting off steam
- Interact with the other side away from the bargaining table (e.g. dinner)
- Make an apology if it is warranted

Potential Communication Problems

General

- Negotiators may not be talking to one another but to other parties.

Playing to the gallery

- Negotiators are not really listening to the other side. **Thinking about their next argument**

- The other side **misinterprets** the communication (e.g. language - the word "average")

Do

- Engage in active listening
- Demonstrate that you have been listening - positive paraphrasing. Understanding is not agreeing
- Think before you speak

Don't

- Blame the other side for the problem; name-call; or raise your voice
- Allow poor body language.



Should I be Fair even if I don't have to be?

Get what you are entitled to ...

Å while keeping good working relationship with the other side

Weighting of **possible benefits** against **possible costs**:

- How important is the excess to you
- May be the other party sees themselves doing you a favor
- Do not assume you are cleverer than the other side
- Unfair results are un-durable
 - When the other side discovers unfairness, he will not be willing to carry it out, so consider the cost of enforcing the agreement
- May lead to revenge from the other party in the future
- Cost you your reputation (building reputation is much more difficult than destroying it) plus reputation opens a large realm of creative agreements in the future
- Finally will your conscience bother you, remember the tourist and the Kashmir rug

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Christian Schopper is the Founder and CEO of Corporate Finance Central Europe – CorpFinCE –, offering Corporate Finance-related advisory services with a focus on German-speaking Europe, Central Europe, the CIS and Russia

Previously, Mr Schopper was member of Merrill Lynch's European Corporate Finance Group and co-ordinated for many years Morgan Stanley's Corporate Finance efforts in Central and Eastern Europe. Before he had worked with Creditanstalt Investment Bank (Unicredit) on numerous privatisation and capital markets transactions in Central Europe and Austria and with Raiffeisen KAG as a fund manager

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