

Advanced Negotiation Tactics



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Learning Objectives

After reading and studying this chapter and doing the exercises, you should be able to:

1. Mention a few ideas contained in negotiation theory related to advanced tactics.
2. Describe the steps in the negotiation process.
3. Describe at least five negotiation tactics dealing mostly with facts and information.
4. Describe at least five negotiation tactics dealing mostly with behavior and emotions.

CHAPTER 5

Chapter Outline

A Glance at Negotiation Theory and the Steps in Negotiation

A Few Aspects of Negotiation Theory Related to Advanced Tactics

The Steps in the Negotiation Process

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Tactics Dealing Mostly with Behavior and Emotions

Making the First Offer

Asking the Other Side, "What Is It You Want Me to Do?"

Effective Use of Silence

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Observing the Other Side's Tone of Voice

Using Ultimatums and the

Threat of Walking Out

Dealing with an Impasse

Dozens, if not hundreds, of negotiation tactics have been reported and/or practiced, with new approaches or adaptations of older approaches continuing to appear. Chapter 4 described a handful of well-recognized strategies and tactics. In this chapter we describe tactics that might be considered more advanced, although the distinction between basic and advanced tactics is far from absolute. We also present a concise amount of negotiation theory and a well-established description of the steps in negotiation.

A Glance at Negotiation Theory and the Steps in Negotiation

To provide a conceptual footing for negotiation tactics and strategies, this section introduces some negotiation theory and a process model of negotiation.

A Few Aspects of Negotiation Theory Related to Advanced Tactics

Chapter 1 presented a few useful definitions of negotiation. For a more advanced understanding of negotiation, including advanced tactics, consider this synthesis of the common elements in the definition of negotiation developed by Aldo de Moor and Hans Weigand: In negotiation, there are two or more interdependent participants, each of whom has some individual goals that may be partially incompatible. Following a process, alternatives are investigated, with the purpose of finding one of them acceptable.¹

Negotiation models differ in whether they are descriptive or prescriptive. *Descriptive models* attempt to carefully describe what actually happens, whereas *prescriptive models* are normative because they prescribe what negotiators should do to attain their goals. Process models agree that there is at least some negotiation preparation, followed by the conduct of negotiation, then implementation of the results. If the results are not as satisfactory as anticipated, renegotiation may be necessary.² The negotiation strategies and tactics presented in this chapter are a blend of description and prescription. Our focus is on presenting ideas that result in more effective negotiation results.

According to negotiation theory, a critical reason that negotiators often reach suboptimal agreements is because they fail to bring to bear the appropriate knowledge required for solving the negotiation problem at hand.³ This perspective justifies the formal study of negotiation.

The Steps in the Negotiation Process

A representative process model of the negotiation process is the one developed by G. Richard Shell,⁴ which is described here and outlined in Figure 5.1. The first step is *preparing your strategy*, a cornerstone of negotiation that was included in the section about preparing for the upcoming negotiation presented in Chapter 4. The goal of preparation is to develop a specific plan of action for the situation you face. One situation you might face is a balanced concern between you and the other party. In this situation, you might be prepared for problem solving or reaching a compromise. Another situational variable is how much a relationship is valued by you and the other side, such as a supplier of plumbing supplies wanting to build a long-term relationship with a purchasing manager at Home Depot. To help build the long-term relationship, you would emphasize tactics that facilitate establishing a positive negotiating climate.

The second step is *exchanging information*. The information exchange is designed to accomplish three purposes. One purpose is to foster communication by setting a friendly and personal tone. A second purpose is to determine which specific issues will be negotiated and share perceptions on these matters. A third purpose is to establish how much leverage, or power, each side has. The representative of the plumbing-supplies company

Steps in the Negotiation Process

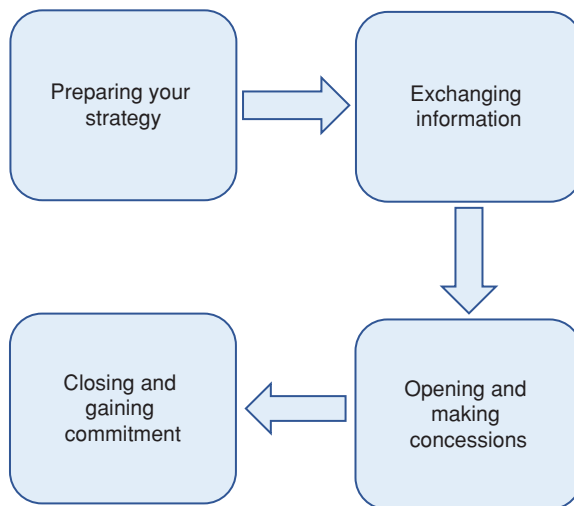


FIGURE 5.1 Steps in the Negotiation Process

Source: The steps in the negotiation process, but not the figure, are from G. Richard Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (New York: Viking Penguin, 1999), p. 115.

recognizes that his or her company needs Home Depot much more than Home Depot needs the company. Hundreds of plumbing-supplies companies exist, whereas there are only a few customers the size of Home Depot.

The third step in the framework is *opening and making concessions* when the bargaining begins. (More will be said about making the opening bid later in the chapter.) The amount of leverage you have is important, such as the purchasing manager at Home Depot opening the negotiation by stating, “We are asking all our suppliers this season to find a way to reduce their prices by 5 percent. Home renovations have dipped a little lately.” The more leverage you have, the less need you have to make concessions. With less leverage, you may need to be more accommodating. Assume that the supplier has a high-demand plumbing fixture that other suppliers are unable to provide. The supplier representative might say, “The only way we could reduce the price by 5 percent is if Home Depot would double the order.”

The fourth step in the framework is *closing and gaining commitment*. Closing occurs when the two sides reach an agreement to resolve their problem or differences. A wide variety of tactics might be called upon to arrive at an agreement, including the most basic tactic of all, compromise. Gaining commitment may require substantial follow-up, such as a Home Depot representative getting in touch with the supplier to make sure that deliveries to the stores or a central distribution facility arrive on time. From the supplier standpoint, the company representative might follow up to find out when the actual order will be placed.

Tactics Dealing Mostly with Facts and Information

In this section we deal with negotiation tactics that focus mostly on facts and information, rather than behavior and emotions. Nevertheless, negotiation is a highly subjective process that always involves psychological factors.

Persuasive Arguments

Presenting a persuasive argument for your demands or offer is an obvious negotiating tactic. Yet, developing your argument, including marshaling convincing facts, may take considerable time. In Chapter 3, persuasion skills were presented as a major contributor to effective negotiation. An example of a persuasive argument took place during the

week-long Los Angeles teacher strike in 2019. One of the key demands of the teachers' union, United Teachers Los Angeles, was to reduce class sizes. The persuasive argument supporting the union's demands was that when class sizes are too large, less time is available to help individual students, with the quality of education thereby suffering.

Principled Negotiation

A comprehensive negotiating scheme, principled negotiation, was developed by the Harvard Negotiation Project and then made prominent by the classic bestseller *Getting to Yes*, by Robert Fisher and William Ury. **Principled negotiation** is a method of deciding issues on their merit, rather than through a haggling process of what each side says it will and will not do, instead looking for mutual gains.⁵ The four components of principled negotiation are presented next.

principled negotiation

A method of deciding issues on their merit, rather than through a haggling process of what each side says it will and will not do, instead looking for mutual gains.

1. *People: Separate the people from the problem.* In negotiation, there is a substantive problem that needs resolution, such as Katrina, a department head, wanting money to update software in the six machines in her department. At the same time, Katrina has to deal with the relationship involved in negotiating this problem with the division president, Malcolm, with whom she wants to maintain a cordial relationship. Fisher and Ury recommend that the negotiator be “soft on people and hard on the problem.” Following this advice, Katrina would carefully explain what the existing software cannot do in terms of productivity and what the new software could accomplish to enhance productivity. At the same time, Katrina would not attack Malcolm for being shortsighted or having a limited understanding of technology. Instead, Katrina would position herself as a business partner who wants to improve productivity.
2. *Interests: Focus on interests, not positions.* Rather than clinging to specific negotiating points, keep your overall interests in mind, and try to satisfy them. A key benefit of focusing on interests rather than positions is that it helps you move the emphasis away from winning and toward what you really want to achieve. If you focus on mutual interests, your intent will be to solve a problem rather than to outmaneuver the other side. For example, if a customer makes an unreasonable demand, your best interest is to somehow satisfy that demand without losing money and also to retain the customer.
3. *Options: Invent options for mutual gain.* The essence of integrative bargaining is to find options for mutual gain, the win-win approach. Joint problem solving, including the search for creative alternatives, is usually required to uncover options for mutual gain. In the Los Angeles teacher strike, the decreased class size could be an option for mutual gain. It is conceivable that the students would soon perform better on standardized tests, creating a climate whereby the California legislature would grant the school system more money in future years.
4. *Criteria: Insist on objective criteria.* People can get very emotional when negotiating and may insist that their demand or offer is reasonable. Quite often, the justification for their position is that their intuition, common sense, or sense of justice is the basis for their offer or demand. If both parties agree to use whatever objective criteria, or standards, are available, negotiations can move more quickly. Suppose a potential franchisee is negotiating the required down payment for a fitness center. Because this chain of fitness centers is not well established, room for negotiation exists. Instead of the franchiser and potential franchisee spending many hours negotiating the size of the down payment, they can conduct research about the down payments for comparable fitness centers across the country, perhaps arriving at \$75,000 as the average. At a minimum, the negotiation range will now be narrowed, saving both parties considerable time and haggling.

The widely accepted negotiation strategy of the best alternative to a negotiated agreement, or BATNA (discussed in Chapter 4), is another aspect of principled negotiation. A BATNA frees negotiators from thinking that reaching an agreement is an absolute necessity.

The Min-Max Approach

When establishing goals for negotiation, as described in Chapter 4, a negotiator has already thought about the minimum he or she will accept as well as the maximum he or she will give. A **min-max** specifies the minimum the negotiator will accept as well as the maximum the negotiator will give away. The owner of a lakefront cottage who rents it for part of the summer might conclude, “The minimum I will accept for weekly rentals is \$1,000, and the maximum I will ask for is \$2,000 per week.” Professor Edward G. Wertheim of Northeastern University suggests that to use the min-max approach, you should ask these four planning questions⁶:

1. What is the minimum I can accept to resolve the problem?
2. What is the maximum I can ask for without appearing outrageous?
3. What is the maximum I can give away?
4. What is the least I can ask for without appearing outrageous?

In answering these questions, it is helpful to empathize with the other side so that you can anticipate his or her answers to the same questions. For example, if the cottage owner asked \$2,000 for a week-long rental, would the answer be, “Go jump in the lake”?

Sharing Information

As described in Chapter 1, information sharing is a characteristic of an effective negotiating situation and is also an effective negotiating tactic by itself. Sharing information contributes to a positive negotiating climate that is conducive to reaching an agreement.⁷ Self-Quiz 5-1 gives you the opportunity to think through your tendencies toward sharing knowledge and information.

Imagining Alternatives

A key challenge during negotiation is to have an alternative in mind in case negotiation does not go your way. The BATNA tactic applies when you really have an alternative. New research suggests that simply imagining an alternative can also bring you some power during negotiation. A series of laboratory studies demonstrated that imagining strong alternatives causes powerless individuals to negotiate more ambitiously. Negotiators reached more profitable agreements when they had a stronger tendency to simulate alternatives or were instructed to simulate an alternative. The researchers point out that the imagined alternative should be a good one and that the technique works best when you make the first offer.⁸

Three examples of potentially effective alternatives are (1) a job hunter imagining that he has already received an attractive job offer elsewhere, (2) a procurement specialist imagining that she has already located another vendor who offers high quality and low price for the product in question, and (3) a small-business owner imagining that he has already located a lower-price garbage hauler when negotiating the price of trash removal.

The Stalking Horse

An advanced and complex negotiation tactic reserved for dealing with bankruptcies of large business enterprises is the *stalking-horse bid*. The term “stalking horse” derives from the 16th century when hunters would hide behind their horse as they moved slowly toward their prey. Companies in financial crisis that are preparing to file for bankruptcy can sometimes accomplish a restructuring of their financial situation with a sale of at least the majority of their assets, if not all. A **stalking-horse bid** is an initial bid on the debtor’s assets. This type of bid implies that sometimes the buyer’s offer is hidden from the courts, creditors, and the public. The highest initial bid becomes the bottom price at the auction for the company’s assets, and the financially troubled company can then refuse lower bids.

When the Sears Holding Company was facing bankruptcy in 2019, its chairman Eddie Lampert was also the owner of the ESL hedge fund. Wearing his hedge-fund hat, Lampert made a stalking-horse bid to buy the remaining assets of the Sears and Kmart stores, thereby keeping over 400 stores open.

min-max Specifies the minimum the negotiator will accept as well as the maximum the negotiator will give away.

stalking-horse bid An initial bid on the debtor’s assets.

SELF-QUIZ 5-1

My Tendencies Toward Sharing Knowledge and Information

Directions: Indicate whether each of the following statements is mostly true or mostly false as it applies to your own attitudes and behaviors.

Statement about Sharing Knowledge and Information	Mostly True	Mostly False
1. I am very secretive at work or school.		
2. The other side in a negotiation usually cannot be trusted, so reveal as little information as you can.		
3. I post lots of information about myself on social media sites.		
4. During a negotiation, I would be vague about how much I was willing to pay or offer as long as possible.		
5. Only a fool would tell coworkers about a great idea he or she had for a new business.		
6. An effective negotiating trick is to keep the other side guessing about what you really think about his or her offer or demand.		
7. A good path to negotiation success is to be as open and candid as possible.		
8. A good path to negotiation failure is to be as open and candid as possible.		
9. I think that it is important that laws about intellectual property rights be strictly enforced.		
10. During a negotiation, it is essential to be evasive about how well your company is doing financially.		
11. If I were trading in one vehicle for another, I would tell the sales representative the real problems with my trade-in.		
12. I think that the other party in a negotiation should be willing to tell me up front the maximum offer he or she is willing to make.		
13. I think that the other party in a negotiation should be willing to tell me up front the minimum demand he or she is willing to make.		
14. I worry a lot about a manager stealing my ideas, even if he or she appears to be honest.		
15. During the warm-up part of a negotiation, I think that it is a good idea to swap details about the personal lives of all the parties involved.		

Scoring and Interpretation: Give yourself 1 point for having answered Mostly True to the following statements: 3, 7, 8, 11, 12, 13, and 15. Give yourself 1 point for having answered Mostly False to the following statements: 1, 2, 4, 5, 6, 9, 10, and 14.

12 or higher: You have very positive attitudes toward sharing knowledge with others inside or outside of negotiations. However, you might be a little too trusting of people whose intentions you do not know.

5–11: You have about average attitudes toward information sharing.

0–4: You have negative attitudes toward information sharing, and you may need to become a little more open with your knowledge and information to be more effective during a negotiation.

A potential limitation of a stalking-horse bid is that the negotiated bid between the company in debt and the bidder may not be approved by the bankruptcy court or the creditors' committee. Furthermore, a higher bid for the assets might surface during the auction.⁹

The accompanying Negotiation and Conflict Resolution in Action feature illustrates a reliance on facts and information in a negotiation between two of the best-known retailers in the United States.

NEGOTIATION AND CONFLICT RESOLUTION IN ACTION

In early 2019, CVS Health Corp. was in a dispute with Walmart Inc. over the cost of filling prescriptions. As a pharmacy benefits manager (PBM), CVS Caremark reimburses pharmacies when customers with CVS Caremark prescription coverage purchase pharmaceuticals. CVS is a major U.S. pharmacy chain and has close to 10,000 locations. The Caremark division oversees benefits for about 93 million people, including setting up networks of pharmacies where customers can pick up their prescriptions. Walmart is also a major pharmacy operator, with almost 5,000 in-store locations. PBMs like CVS Caremark have been criticized by consumers, lawmakers, and regulators for a lack of transparency about the prices and rebates they negotiate with drug manufacturers.



Source: jejmShutterstock.

CVS Health had requested that Walmart continue to fill prescriptions as an in-network participating pharmacy through April 2019.

Caremark said that Walmart wanted an increase in what the retail giant was paid for prescriptions at the company's in-store pharmacies. A negative consequence was that patients would have paid more for their medicine. Another version of the dispute is that Walmart was not asking CVS to increase the amount it paid the retailer when customers filled a prescription. Instead, Walmart demanded CVS to maintain prescription rates at the same level. CVS Health had requested that Walmart continue to fill prescriptions as an in-network participating pharmacy through April 2019.

CVS and Walmart had at first failed to agree on pricing, prompting Walmart to leave the pharmacy network for prescription drug plans that CVS manages for companies, for health insurers, and for the Medicaid program for low-income people.

As negotiations began, CVS noted that it had a large network of 63,000 pharmacies without Walmart. Less than 5 percent of its members enrolled in the plans involved in the dispute relied exclusively on Walmart to fill prescriptions. Walmart decided to stop filling prescriptions for customers who received their pharmacy benefits through the CVS Caremark pharmacy networks. A Walmart spokesperson said that the company was disappointed because "CVS chose not to come to a resolution in a way that is beneficial to their members who are also customers." The spokesperson added that Walmart wanted to pass along savings to its customers rather than to a middleman.

A couple of days after the dispute was made public, CVS and Walmart announced that they had reached a negotiated agreement under which Walmart could continue being a member of the CVS PBM network and Managed Medicaid retail. Owing to the agreement, the CVS pharmacy network will maintain approximately 68,000 outlets.

CVS Caremark CEO Deric Rice commented, "We are very pleased to have reached a mutually agreeable solution with Walmart. As a PBM, our top priority is to help our clients and consumers lower their pharmacy costs." She added that the new agreement accomplished Caremark's top priority and enabled Walmart to continue participating in CVS's commercial and Managed Medicaid pharmacy networks. Additionally, it provided enhanced network stability for the company's clients and the PBM members.

Industry analyst Ross Muken said the speed at which the dispute was resolved demonstrates the negotiating strength of PBMs in contract discussions. Consumers typically have their prescriptions filled where their health insurance is accepted. Walmart would therefore have lost out on an estimated 15 to 20 million prescriptions it receives from customers who are covered by

CVS Caremark. Sean Slovenski, a Walmart senior vice president, said in a press release that the terms of the negotiated settlement were “fair and equitable.”

Questions

1. What shared objective might Caremark and Walmart have had that helped attain a speedy negotiated solution to their dispute?
2. What is your opinion about which side held the balance of power in this negotiation?

Source: Original story based on the following sources: “Walmart Exiting CVS Commercial, Managed Medicaid Retail Pharmacy Networks,” *Progressive Grocer* (<http://progressivegrocer.com>), January 15, 2019, pp. 1–2; Anna Wilde Matthews and Sarah Nassauer, “CVS Health and Walmart Could Split over Dispute,” *Wall Street Journal*, January 16, 2019, p. B2; Robert Langreth and Matthew Boyle, “Walmart Splits with CVS after a Battle over Prescription Costs,” *Bloomberg* (www.bloomberg.com), January 15, 2019, pp. 1–2; “CVS, Walmart Reach Pharmacy Network Agreement,” *Breaking the News* (www.breakingthenews.net), January 18, 2019, p. 1; Caroline Humer and Ankur Banerjee, “CVS, Walmart Resolve Pharmacy Contract Impasse,” *Reuters* (www.reuters.com), January 18, 2019, pp. 1–2.

Tactics Dealing Mostly with Behavior and Emotions

In this section we describe advanced negotiation tactics that tend to emphasize behavior and emotion rather than facts and information.

Making the First Offer

Plausible arguments have been advanced for making the first offer in negotiations. Business broker Gary Miller notes that conventional negotiating wisdom says it is better to wait. Such advice makes intuitive sense, but it fails to account for the powerful effect that first offers often have on how people think during negotiation. In situations of ambiguity and uncertainty, first offers have an anchoring effect and might exert a strong pull throughout the negotiation. High anchors direct our attention toward a demand or offer’s positive attributes. In contrast, low anchors direct attention to the flaws of the demand or offer.

Anchoring research suggests that making the first offer often results in a bargaining advantage for the person or side making the offer. Because numerical values pull judgments toward themselves, they are termed *anchors*. When a seller makes the first offer, the final price tends to be higher than when the buyer makes the first offer.

Despite the advantages of making the first offer, it may not be advantageous when the other side has much more information than you do about the transaction to be negotiated. For example, buyers and sellers represented by investment bankers often have more in-depth knowledge than do unrepresented buyers and sellers.¹⁰

Christopher Voss was a chief hostage negotiator for the Federal Bureau of Investigation (FBI) and now teaches the art of negotiation as an adjunct professor at two universities. He strongly advocates letting the other side go first, commenting that negotiators typically want to speak first, but they are not listening. Voss says, “You are wasting your time if you go first. In addition, there will be mistakes or omissions in your data.” Before committing to a position, it is best to extract as much information as you can from the other side. It is best not to be so certain of what you want at the beginning of a negotiation that you would not take a better offer or demand.¹¹

Another relevant observation about the first offer in negotiations is whether to take it seriously. Stephen P. Robbins and Phillip L. Hunsaker recommend paying little attention to initial offers. Instead, treat an initial offer as only a point of departure.¹² Initial offers are frequently unrealistic and fall into the min-max framework, such as a building owner asking \$5 million for an office building that has an assessed valuation of \$3 million.

Asking the Other Side, “What Is It You Want Me to Do?”

An effective tactic for both negotiation and other forms of conflict resolution is to ask the other side what he or she would like you to do in order to reach an agreement. If you do

what the other side wants, you will already have reached an agreement. The underlying psychology is that having suggested the solution, the other side will feel committed. Here is an example:

You and your teammates are dividing up work for a large task. It appears that several of your teammates do not think you are making an equitable contribution. After negotiating your contribution for about 30 minutes, you find that negotiations are stalled. You then ask, "What would you people like me to do?"

Because you are so cooperative, the other team members will probably not make an outrageous demand. Also, they will probably regard your contribution as equitable because they formulated it.

Effective Use of Silence

Silence is frequently an effective negotiation tactic. If you are silent, the other party is likely to think about what you just offered or demanded, thereby reinforcing what you just stated. The use of silence, however, must be executed strategically. You first make your offer or demand, then wait for your counterpart's reaction instead of elaborating more on what you just said. The silence creates a void that the other party might feel obliged to fill with words, and these words might work in your favor.¹³ An investor in accounts receivable might say to a city official, "I see some value in that bucket of long-overdue taxes. I will give you 25 cents on the dollar for your entire portfolio of unpaid taxes." The investor then says nothing, and the city official says, "Twenty-five cents on the dollar is better than what we have now. I will get back to you after I talk with the debt committee members."



Silence is frequently an effective negotiating tactic.

Source: Luis Molinero/Shutterstock.

Gaining Leverage

In negotiation, the person who has leverage holds a perceived advantage that can give him or her an edge in attaining his or her goal. **Leverage** is the power that one side of a negotiation has to influence the other side to accept his or her position. Having leverage means about the same thing as having psychological power, and it is based on one side's ability to award benefits and impose costs on the other side.

A current example of negotiators with exceptional leverage is the sales representatives from Aardvark, the leading manufacturer of paper straws. The leverage stems from the fact that many municipalities are banning or planning to ban plastic drinking straws. From 2017 to 2018, the demand for the high-quality paper straws increased by 50 times the previous period (5,000 percent). A high-quality paper straw holds up for more than one hour when immersed in a drink. Aardvark is currently producing more than 1 million straws per day and cannot keep up with demand.¹⁴ A sales representative for Aardvark would therefore have considerable leverage in selling straws to McDonald's or Burger King.

Professional negotiator Derek Gaunt suggests that an effective way of gaining leverage is to *identify a black swan*, or something that has a major impact on the negotiation. The black swan is usually a valuable piece of information that can change the direction of the conversation and, by extension, the outcome of the conversation.¹⁵ An Aardvark representative, for example, might inform a customer representative about pending legislation banning plastic straws.

leverage The power that one side of a negotiation has to influence the other side to accept his or her position.



An Aardvark representative, for example, might inform a customer representative about pending legislation banning plastic straws.

Source: HelloRF Zcool/Shutterstock.

Observing the Other Side's Tone of Voice

According to Voss, the most reliable nonverbal indicator of a change in demand by the other party is a change in voice tone. A former general manager of the L.A. Dodgers told Voss that in a two-hour negotiation, there will be 90 seconds of solid gold, and that is the key to the entire deal.¹⁶ The “solid gold” might be a lowered tone of voice, such as a union representative saying to her counterpart softly, “We still think the absence of time-recording devices is important.” Earlier in the negotiation, she might have spoken in a loud tone about the demand for getting rid of time-recording devices for indicating when employees check in and out of work.

Using Ultimatums and the Threat of Walking Out

When faced with an apparent impasse during negotiations, some people become emotionally upset and/or issue ultimatums. For example, “If you can’t find any money in your budget, why should I bother talking to you?” Or the negotiator might leave the negotiation temporarily or permanently, quickly dooming any potential deal under consideration. Walking away from a negotiation that is going poorly is included in both the BATNA and min-max tactics.

Negotiating specialist and business professor Stuart Diamond suggests, “Keep your emotions in check or you’ll be checking out of your negotiation.” Diamond writes that as a headhunter (executive search specialist), he has heard hardline reactions from both job candidates and hiring managers. When hearing Diamond relay the offer from a hiring manager, a candidate might say, “There is no way I am even going to consider such a ridiculous salary.” And when Diamond returns to the hiring manager with a counteroffer from the candidate, a hiring manager might say, “This is all we are going to offer for the position, and the candidate can take it or leave it.” When both parties take such irrevocable positions, the negotiation outcome is lose-lose.¹⁷

Dealing with an Impasse

The threat of walking out of negotiations, followed by an actual walking out, leads to a breakdown in negotiation. An **impasse** takes place when the two sides attempting to resolve a problem are unable to reach an agreement and become deadlocked. The consequences of an impasse can be severe, such as government services being shut down, a labor union going on strike, or an employer locking out workers. The Program on Negotiation at Harvard Law School recommends four techniques that professional negotiators can use to build trust and overcome an impasse when the bargaining becomes adversarial¹⁸:

1. *Adopt a gain frame.* Negotiations dealing with costs and losses, such as a mortgage foreclosure or a budget shortfall, are generally more competitive and challenging than those involving benefits and assets, such as a home purchase or budget surplus. A rigid attitude can be self-defeating when negotiating over losses. Attempt to identify any benefits that accompany the difficulties you anticipate, and encourage your counterpart to do the same. For example, if you receive a much smaller budget than anticipated, develop greater fiscal restraint, such as searching for a lower-cost supplier.
2. *Think multiple steps ahead.* When you are faced with an unappealing demand or offer, think multiple steps ahead before refusing to negotiate or compromise unless the other party submits to meeting your conditions. Rigid positions and outright rejections can trigger a protracted impasse.

impasse A situation that takes place when the two sides attempting to resolve a problem are unable to reach an agreement and become deadlocked.



Source: AJR_photo/Shutterstock.

A rigid attitude can be self-defeating when negotiating over losses.

It can work to advise the other party about what aspects of your offer are the most palatable and what the other party might ask for in return for concessions. For example, “If we renovate your storm-damaged building at a price higher than your other bids, you will know that an excellent job will be accomplished on time. Maybe you would want us to throw in renovating an older office that was not storm damaged.”

3. *Keep talking.* Refusal to negotiate on an issue of major importance can have dysfunctional consequences. Individuals and organizations sometimes refuse to negotiate, thinking that the counterpart will back down as the costs inflicted by an impasse mount. A problem often overlooked in the negative emotions involved in the negotiation is that the impasse imposes substantial damages on both sides. As time passes, the two sides often become more unyielding. If the two parties do agree to restart negotiations, the ill will that accumulates during the impasse will make the talks more tension-filled and challenging. An example would be a schoolteacher strike that lasts for three months, leaving both sides bitter, as well as students and parents suffering the consequences.
4. *Attempt to build trust and goodwill.* Negotiation is usually a more hopeful means of resolving a conflict and ending an impasse than refusing to negotiate. When talks have reached an impasse, try building trust and goodwill by proposing that relatively minor issues be negotiated first. However bitter the negotiations, a display of empathy can help build trust and goodwill. For example, in an impasse between management and the labor union, a management representative might say to a union leader, “I recognize that it is a living nightmare for your workers to be going without pay. They are probably missing mortgage, rent, and car payments. We have to find a solution to this negation breakdown together.”

Summary

Negotiation models differ in whether they are descriptive or prescriptive. Process models agree that there is at least some negotiation preparation, followed by the conduct of negotiation, then implementation of the results. If the results are not as satisfactory as anticipated, renegotiation may be necessary. Negotiations often fail because the negotiators do not bring to bear appropriate knowledge.

According to a representative model, the steps in the negotiation process are as follows: preparing your strategy, exchanging information, closing and gaining commitment, and opening and making concessions.

Tactics dealing mostly with facts and information include the following: (1) persuasive arguments, (2) principled

negotiation, (3) the min-max approach, (4) sharing information, (5) imagining alternatives, (6) the stalking horse.

Tactics dealing mostly with behavior and emotion include the following: (1) making the first offer; (2) asking the other side, “What is it you want me to do?”; (3) effective use of silence; (4) gaining leverage; (5) observing the other side’s tone of voice; (6) using ultimatums and the threat of walking out; and (7) dealing with an impasse. Four recommendations for dealing with an impasse are (1) adopt a gain frame, (2) think multiple steps ahead, (3) keep talking, and (4) attempt to build trust and goodwill.

Key Terms and Phrases

Impasse, p. 74
Leverage, p. 73
Min-max, p. 69

Principled negotiation, p. 68
Stalking-horse bid, p. 69

Discussion Questions and Activities

1. If you were going to negotiate a starting salary for yourself, what kind of preparation should you make?
2. Many employee groups are demanding a minimum wage of at least \$15 per hour for entry-level workers even for service industries such as restaurants. What concessions could these employee groups make to management in order to attain their demands?
3. What persuasive argument could a supplier of wood for the furniture industry use to negotiate a price increase of 25 percent?
4. Assume that you are negotiating to purchase a distressed property in order to renovate the property and then sell it at a profit (“flipping” the house). Give an example of how you could be “soft on the people but hard on the problem.”
5. As a team leader in a manufacturing company, you are negotiating for funds to outfit your team of 12 people in team T-shirts and caps. Where could you find “objective criteria” to use in your negotiation?
6. Why might leadership in a company that was going bankrupt be willing to listen to a stalking-horse bid?
7. A hostage negotiator mentioned in the chapter strongly advocates letting the other side go first in a negotiation. What kind of first offer could a hostage-taker make who has five people trapped in a bank?
8. What is your opinion of the potential effectiveness of the tactic of asking the other side, “What do you want me to do?”
9. Imagine a sales representative for paper straws working for Aardvark, negotiating prices with customers and potential customers. Considering all his or her leverage, why should the sales rep worry about building a positive negotiating climate?
10. Imagine that you have just paid \$3,000 more than you anticipated for the vehicle of your choice. What type of “gain frame” can you possibly adopt?

Skill-Building Exercise: Imagining Alternatives in Negotiation

Research cited in this chapter suggests that in many negotiating situations, having imaginary or simulated alternatives leads to an effective outcome for the negotiator. A caveat, however, is that the imagined alternative should be of high quality. For each of the five following scenarios, develop a sensible alternative to the stated negotiating offer or demand. The alternative might also be regarded as a backup possibility in case the demand or offer is not met.

Scenario 1: You have five years of work experience in your field, and you are job hunting to advance your career. Develop an imaginary alternative you have to staying in your present position to give you more strength in your job hunt.

Scenario 2: A couple living in Toronto, Ontario, wants to relocate to the West Coast, so they place their three-bedroom condominium on the market for \$750,000. Give this affluent couple an imaginary alternative as they review offers from potential buyers.

Scenario 3: A nonprofit social agency provides help, including memory training, to people experiencing Alzheimer’s disease. Fantasia, the agency head, is going to ask the state to provide her agency \$1 million to help keep it running for the upcoming fiscal year. Fantasia knows this is a lot of money to demand, but she is passionate about

her agency’s purpose and the services it provides. Develop an imaginary alternative to not receiving \$1 million in funding from the state.

Scenario 4: Rondo, the owner of a small software development company, has developed a computerized camera and sensing device that detects unsafe exhaust systems as vehicles pass through a highway toll booth. The owners of the vehicles are then sent a request to replace or repair the defective exhaust system. Rondo thinks that because of the interest in climate change, a device that can help reduce noxious emissions from vehicles is very valuable. A major high-tech firm offers to acquire Rondo’s firm for \$25 million. Develop an imaginary alternative offer for Rondo’s firm as he negotiates with the high-tech firm.

Scenario 5: Your retired parents are relatively young and in good health, but they are bored. They decide they would like to own and operate a small boutique, perhaps four days a week, to give more purpose to their lives. On the Internet, you find a dog- and cat-grooming business, Heavenly Groomers, for sale that you think would be ideal for your parents. Using your parents’ funds, you will offer a maximum of \$35,000 for Heavenly Groomers. Develop an alternative to purchasing this business to give you strength in your negotiation.

CASE PROBLEM 5A: Branch Manager Abigail Blames Automated House Appraisals

Abigail is a branch manager at Property Appraisals LLC, a regional company whose primary business is appraising the value of residential properties. The appraisals serve a couple of important purposes. Sellers sometimes use the appraisals to provide guidelines for setting the price of a property placed on the market. A more extensive use of the appraisals, however, is by mortgage lenders, such as banks, that want an accurate value of a house before issuing a mortgage. Abigail has a staff of four property appraisers plus an administrative assistant.

Branch revenue has shown a decline for nine consecutive quarters even though residential sales in Abigail's city have shown a slight increase over the same period. Gwenn, the CEO of Property Appraisals, has been upset with the declining number of appraisals conducted at Abigail's branch. During a face-to-face meeting with Abigail at her branch, Gwenn asked, "Will you please explain why you cannot stop the decline in business?"

Abigail responded, "As you well know, the property appraisal field is suffering from automation, and particularly algorithms. A lot of potential customers are simply visiting Zillow.com to figure out how much their home is worth. The Zestimate provided is absolutely free. Stan Humphries, the chief analyst at Zillow, boasts that the company values about 100 million homes every night, with an error rate of 4.3 percent. That's pretty tough competition."

Gwenn then countered, "Okay, I can see that if somebody wants a quick estimate of the value of a house, they might use Zillow. But what about when a person wants an appraisal that is not simply plucked off the Internet?"

Abigail said with a pained expression, "You must be aware that people are getting estimates supplied by firms in India for about \$25. The Indian firm never gets near the property. They assess information from the Internet, including Google photos, and make their estimates using software. Again, that type of competition is hard to beat when we charge about \$375 for an appraisal."

Gwenn said, "I am aware of the problems the home appraisal industry is facing, but I still think that your office can do better. There is still demand for customized, professionally prepared appraisals of residential properties. Stop blaming automation, and look at what you could be doing to enhance revenue in your branch."

Abigail responded, "Maybe we could work together on deciding how much of a revenue enhancement would please you."

Case Questions

1. How justified do you think Abigail is in blaming low-priced Internet appraisals for the decline in revenue at her branch?
2. Why should Gwenn bother to negotiate with Abigail about revenue-enhancement targets?
3. What approach to negotiation should Abigail take to arrive at a reasonable target for revenue enhancement for her branch?

Source: A few of the facts in this case are from the following sources: "Why Automation Is Killing the Property Appraisal Business," *Knowledge@Wharton*, August 21, 2017, pp. 1–4; Joe Light, "Mama, Don't Let Your Babies Grow Up to Be Appraisers," *Bloomberg Businessweek*, July 17, 2017, pp. 29–30.

Associated Role Play

Abigail and Gwen agree to have a discussion about negotiating a revenue-enhancement goal for Abigail's branch. One student plays the role of Abigail, who plans to open negotiations with a goal of a 2 percent revenue increase. Another student plays the role of Gwen, who opens the negotiation session with a goal of a 10 percent increase in revenues. The role players can choose any basic (Chapter 4) or advanced (Chapter 5) negotiation techniques they think will work well in this scenario. Run the role play for about 10 minutes. Observers might provide feedback on the negotiation skills of the role players.

CASE PROBLEM 5B: Apple and Qualcomm Slug It Out over Licenses and Patents

Apple Corp. and chipmaker Qualcomm have been embroiled in an ugly legal battle for several years. Both sides have made bitter accusations against each other and filed lawsuits against each other in several countries in addition to the United States. Apple has accused Qualcomm of unfair licensing practices, and Qualcomm has countered by accusing Apple of patent infringement. Qualcomm is the major supplier of modem chips that enable smartphones to communicate over cellular networks. More than one-half of the company's profits derive from patent license fees paid by smartphone manufacturers.

Apple filed a lawsuit against Qualcomm in January 2017 that accused the company of monopolistic practices that harm Apple and the entire industry. The Federal Trade Commission filed similar charges against Qualcomm at about the same time. Qualcomm continues to insist that its business practices are legal.

Apple has disputed Qualcomm's legal right to charge very high royalties for the use of its technology. Also at issue is the Qualcomm requirement that Apple pay a percentage of the iPhone's revenue in return for the use of Qualcomm patents.

During a television interview, the Apple CEO said, "The issue we have with Qualcomm is that they have a policy of no license, no chips. This, in our view is illegal. They have an obligation to offer their patent portfolio on a fair, reasonable, and non-discriminatory basis and they don't do that. They charge exorbitant prices."

Qualcomm CEO Steven Mollenkopf and other company executives have said several times that the company expects to settle the dispute with Apple outside of court. Reports from Apple deny the possibility of such a settlement.

A key development in the controversy was that in December 2018, Apple faced trouble in China with respect to the sale of iPhones. Qualcomm won a ruling on patent infringement that banned the sale of some older iPhone models, with recent models not being affected. China is a key market for Apple, generating about one-fifth of the company's revenues. Despite the ruling, Apple continued to sell the older models through its many Apple stores in China. Apple spokesman Josh Rosenstock said, "Qualcomm's effort to ban our products is another desperate move by a company whose illegal practices are under investigation by regulators around the world." In turn, Qualcomm's general counsel Don Rostenberg said, "Apple continues to benefit from our intellectual property while refusing to compensate us."

A major development in the dispute is that Qualcomm has accused Apple of stealing valuable trade secrets and

then giving them to Intel as a way of boosting the performance of Intel's chips on iPhones. Apple has been reducing its reliance on Qualcomm and instead purchases more modem chips from Intel to install in its latest iPhones.

A smaller development in the controversy between the two tech giants was that the Manheim District Court in Germany dismissed a patent lawsuit from Qualcomm against Apple. The suit was filed by Qualcomm based on Apple's use of the former's chips in Apple smartphones. The court decided that Qualcomm's lawsuit against Apple was without merit. The patent centered on the use of constant voltage in the smartphone. Because the Apple smartphones in question did not have a constant voltage, the smartphones were ruled to not violate the patent.

Qualcomm conducted an aggressive public-relations campaign against Apple. The chipmaker hired the firm Definers Public Affairs to publish negative articles about Apple on a conservative website. Another tactic was to start a false campaign to draft Tim Cook as a candidate for the president of the United States in the 2020 election. The campaign announcement might have annoyed President Trump.

Attorneys representing the U.S. International Trade Commission (ITC) have issued statements that essentially support Qualcomm's claims with respect to Apple's alleged patent infringement. A negative development for Qualcomm is that the company is facing a \$1.2 billion fine from antitrust regulators in Europe after it was revealed that Qualcomm had been paying Apple to use its chips instead of chips made by competitors. The regulators contended that Qualcomm paid Apple billions of dollars to shut out competitors between 2011 and 2016. If Apple stopped using a Qualcomm chip in a device, the payments would end, and Apple would have to return a percentage of the payments made.

Qualcomm president Derek Aberle said, "If you peel apart all the arguments Apple is making, we believe firmly they are all without merit. At the end of the day, they essentially want to pay less for the technology they are using. It's pretty simple."

Case Questions

1. What hope do you see that the differences between Apple and Qualcomm are negotiable?
2. Assuming that company representatives from both sides decide to negotiate a solution to their problems, how should they begin after all the bitterness on both sides?

3. Suggest a primary offer for both Apple and Qualcomm in this complicated case.
4. How was this case settled as revealed by news sources?

Source: Original case based on facts and alternatives in the following sources: Don Clark and Jack Nicas, “Chinese Court Says Apple Infringed on Qualcomm Patents,” *New York Times* (nytime.com), December 10, 2018, pp. 1–3; “In Brief,” *Bloomberg Businessweek*, December 17, 2018, p. 9; “Germany Court Dismisses Qualcomm Patent Lawsuit Against Apple,” *Jurist* (www.jurist.org/news), January 15, 2019, pp. 1–4; Sara Salinas, “Apple CEO Tim Cook Rips into Qualcomm. Leaves Little Chance of Settlement in Patent Dispute,” *CNBC* (www.cnbc.com), January 8, 2019, pp. 1–2; Mark Jansen, “Apple vs. Qualcomm;

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Associated Role Play

Three role players are representatives of Apple, and three other role players are representatives of Qualcomm. The six people are engaged in a preliminary negotiation to see if the two sides can find some common ground to find a solution to their problem. Attempt to see what can be done to reduce some of the animosity between the two sides in order to attain a constructive outcome from this preliminary negotiation. Observers might provide feedback about whether this 15-minute session is productive.

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