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Negotiation

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Negotiation

The Negotiation Programme is written by Professor Gavin Kennedy BA MSc PhD FCInstM, Managing Director of Negotiate Ltd and a Professor at Edinburgh Business School, Heriot-Watt University, Edinburgh, Scotland.

Professor Kennedy taught at the University of Strathclyde Business School for 11 years and was a Professor in the Department of Accountancy and Finance, Heriot-Watt University, Edinburgh from 1984–8. He ran his first Negotiating Workshop at Brunel University, London in May 1972.

His books on Negotiating include: *Managing Negotiations* (co-author), 1980 (3rd edition, 1987), Business Books Ltd; *Everything is Negotiable*, 1983 (3rd edition, 1997), Arrow Books; *Negotiate Anywhere*, 1985, Arrow Books; *Superdeal: How to Negotiate Anything*, 1986, Hutchinson; *The Economist Pocket Negotiator*, 1988, (2nd edition, 1997), Profile and the Economist Publications; *Kennedy's Simulations for Negotiation Training*, 1993 (2nd edition, 1996), Gower; *Kennedy on Negotiation*, 1997, Gower and *The New Negotiating Edge*, 1998, Nicholas Brealey.

His books have been translated into Dutch, German, Swedish, Spanish, Chinese, Japanese and Portuguese.

He is a co-author of the *Negotiating Skills Portfolio*, 1986, Scotwork, and *The Art of Negotiation*, a Longmans Training film, 1983, which is also available in the interactive format. He is also author of the video packages: *Everything is Negotiable*, 1987 and *Do We Have a Deal?*, 1992, both from Gower.

Professor Kennedy is a Fellow of the Chartered Institute of Marketing. The following are some of the companies he has consulted with: Allied Irish Bank Group; British Petroleum; CWS; IBM; Motorola; Royal Bank of Scotland; United Distillers.

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For Gavin Alexander

Contents

Preface

Hardly a word was changed in the many reprintings of the 1991 edition, but for a year or more I have been conscious of the need to update various pieces of the material and to expand the text into some important areas of negotiation work that have been produced over recent years.

Hence, I have taken the opportunity of this new edition to make some changes to the original text and to add some new materials to the original Module 8 (Alternative Approaches to Negotiation). This module has now been expanded into three new modules: Rational Bargaining?, Streetwise manipulation?, and Personality and Power in Negotiation?

I have also taken this opportunity to review other parts of the original text where some students have indicated by their attempted answers that some clarification of certain concepts would be useful. Overall, the MBA examinations results have been most encouraging, with a few lapses when students have clearly not understood the question or where they have ignored what they were asked.

For instance, a question that asks the student to identify the main objective of a negotiator in a case study question prompts answers from a minority of students who contrive to identify several objectives, rather than one, presumably in the hope that one of the objectives will qualify as an answer! Or, a case study question is sometimes answered by five pages of text, all this for a maximum of only eight marks, with the same students' essay questions then squeezed for time and barely containing enough material to fill a page, thus putting at risk a chance of gaining a maximum of 20 marks. Clearly, these students exhibit poor examination technique, not to mention failing to grasp the precepts of marginal analysis in the Economics text!

Another common error is for a student to rote learn pages of this text and to hope that, by reproducing them as answers, whatever the question is about, they will gain a pass. This is easily spotted by an examiner and in practice it does not attract marks. The text is not suitable for rote learning, nor is this behaviour a short cut to a pass.

However, the overwhelming majority of students who have taken the MBA examinations have avoided these errors and have written good to excellent answers and have thoroughly deserved the pass marks they have been awarded. Those students who discuss their own negotiating experiences, or their interpretations of negotiating experiences reported in the media, always do better in their examinations. The examiners are looking for evidence of a student's understanding of the concepts from the text combined with evidence of their correct application to the real world. Current and personal examples, if they are relevant, of negotiation activities are a good source for this type of evidence.

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Acknowledgements

No work of this type could be attempted, let alone completed, by a single person and I am happy to acknowledge the contributions of several people to the development of the Four Phase/Two Styles approach to negotiation outlined in this text. In particular, John Benson, was instrumental in the discovery and development of the original 8-Step approach in the early 1970s and has continued over the years to anchor our approach in the real world of negotiation practice. Among his then colleagues at Scottish & Newcastle Breweries (S & N), Gordon Stevens (now at Bass Inns), the late Ken Stuart and Ian Kilgour contributed in guinea pig roles in testing and revising the 8-Step approach as it applied both to the training of negotiators and to their own practice in commercial and industrial relations. Peter Curran, formerly of S & N, made significant contributions to the presentation of the Preparation phase.

Colin Rose, of Rose & Barton, Victoria, Australia, introduced me to the Red and Blue styles model of negotiating behaviour, which is now integrated into our own workshops with his permission. This simple device has been a great success with managers wrestling with the contradictory competitive and co-operative styles of negotiation and neatly completes the Four Phase approach.

The material used in this text has come from many sources, some through consultancy work with clients and some through the thousands of men and women who have attended the workshops over the years. Contact with, and influence by, the people who conduct negotiations is the key to understanding what negotiation is about and to improving performance, and I am no less convinced now than I was in 1972, from my experiences at Shell-Haven, that this constant and regular contact with real-world negotiators has been of fundamental benefit in developing the concepts presented in this text. Their contribution is gratefully acknowledged and, I hope, repaid with interest in the relevance they have brought to my work.

Lastly, a word of thanks to the Edinburgh Business School at Heriot-Watt University, which over the years has provided stimulus for my work on negotiation. Professor Keith Lumsden generously extended my contact with negotiators through his own extensive work in Scandinavia and the United States. His invitation to write this text for the Heriot-Watt University MBA open learning programme was much appreciated, as are the patient efforts of Charles Ritchie to sort out the wheat from the chaff in the manuscript.

Gavin Kennedy
Edinburgh

Introduction

In the case of negotiation education and training in the UK there is a direct link between the approach adopted in this text and some autobiographical data about how the author became interested in the subject.

In 1969, shortly after graduating in economics and while teaching young managers on the part-time Diploma in Management Studies programme in a polytechnic near London, I was invited to visit the Shell-Haven Refinery on the Thames Estuary for a briefing on Shell's innovative attempts to secure a productivity deal with several unions representing the skilled maintenance workforce. These were the years of the then Labour government's (ultimately futile) laws that allowed pay rises only for productivity improvements. Managements across the UK at the time were accumulating experience on how to improve on the minimum standards set by the government's productivity criteria, and unions were similarly learning how to maximise their opportunities for pay increases.

The Shell-Haven negotiations had only just restarted after a lapse of many months because of a procedural dispute between the management and the unions: briefly, the management had insisted on establishing the extent of the productivity gains likely to be achieved before committing Shell to a specific increase in pay, while the unions insisted on knowing what pay increase was likely to be offered before committing themselves to detailed measures to improve productivity. A typical deadlock ensued, until a typical formula was found to meet both sides' reservations about 'buying a pig in a poke'.

The briefing was conducted by the refinery's Maintenance Superintendent and, over the excellent lunch Shell provided, I must have shown my relative ignorance of the way economic decisions were made in the real world as opposed to how they are made in theory, for he invited me to leave my classroom as often as I liked and observe the way real people fought over the price of labour and the quantity of output in real negotiations.

Two years later the productivity negotiations were concluded, with the management achieving some, but by no means all, of the productivity changes they wanted (the unions adamantly refused to abolish craft distinctions and become refinery mechanics) and with the unions achieving the largest pay increase in Shell's history at, for them, the high price of the abolition of paid overtime working. Both sides were happy with the deal, which to my mind is the best definition of a good deal. Over the two years I had sat through hours of meetings, and not just with the management. The union negotiators agreed to talk to me about their views on what was happening and, as mutual trust developed (they realised that I was only an academic and not a management 'spy'), they revealed more of their perceptions of what they felt they deserved and what they thought they were likely to achieve. Likewise, on the management side, I attended meetings, some while they prepared their next moves and some while they discussed what had gone right or wrong in previous sessions with the unions. I was also able to attend the negotiating sessions, where the negotiators were working for real, where their 'best laid schemes' were

severely tested and where the outcome of a session had a direct effect on the men the unions represented and/or on the costs the management were concerned about.

Shortly before the successful conclusion of the Shell-Haven productivity negotiations, in 1972, I had begun teaching economics to undergraduates at Brunel University in West London. Brunel had recently established a management programme, and I volunteered with a colleague, Peter Seglow from the Sociology Department, to present a seminar on 'Workplace Negotiations'. The first seminar was run in May 1972 and was attended by 18 managers from a wide cross-section of business activity. Over five days the participants listened to academics from economics and sociology, interspersed with role-playing sessions negotiating cases that drew upon the relatively limited experience of Seglow and myself of real-world industrial relations.

The participants of those early seminars appeared to consider that what we were offering was of some use to them, if only because they sent many of their colleagues to subsequent seminars. This did not prevent me from being unhappy about how we were teaching negotiation to practical people, whose needs were different from those of academic students. The student establishes his competence by how well he applies his intelligence to his chosen theoretical discipline (including his ability to refute discredited theories and to solve theoretical problems); the manager establishes his competence by how well he applies his intelligence to solving practical problems. Blatantly mixing the two approaches in our seminar left me uneasy that we were not doing enough for our participants.

We had no model of how to run a negotiation workshop because there were no well-established negotiating skills courses running in the UK in 1972 – I know, because we drew a blank when we searched for them (though we did become aware, in 1973, of the work in behavioural studies of Neil Rackham and John Carlisle of the Huthwaite Research Group in Sheffield, and later, in 1974, of seminars run by Dr Gottschalk at the London Business School, which were heavily influenced by a psychological approach to the problems of negotiation). This raised the interesting question: if nobody teaches negotiating skills in the UK and yet everybody negotiates, and had been doing so for millenia without the advantage of training in what they were doing, what justification (apart from enhancing the university's income) was there in running a negotiation workshop?

The situation, as ever, was different in the United States. There, a veritable industry of private consultants (among them Messrs Chester Karrass, Henry Calero, Herb Cohen and Gerard Nierenberg) were successfully marketing various negotiation improvement courses for managers. Negotiation had also begun to attract academic attention following the publication of Richard Walton and Robert McKersie's *A Behavioural Theory of Labour Negotiations* (1965), McGraw-Hill and Thomas Schelling's earlier work, *The Strategy of Conflict* (1960), Harvard University Press. Both books, from different perspectives, have since become classics in the field. But nothing like this level of activity was happening in the UK, though there was a potential demand for it. Some academic work had been done on the issues raised by current negotiations, mainly labour disputes and international conflicts, but these studies seldom strayed beyond tackling policy questions, such as why unions opposed redundancies

or what had happened in a steel strike, and rarely, if ever, asked questions about the mechanics of negotiation, such as why a negotiator would play this tactic as against another, or how negotiators signalled their willingness to move.

My doubts throughout 1972–3 centred on the question: how can we develop from scratch a workshop to educate and train managers to improve their negotiating skills? This led to other questions: should I follow my Shell-Haven experience and devote time and resources to the academic study of real labour negotiations in the UK, as Walton and McKersie had done in the USA, or should I follow Schelling and take up the academic study of conflict? Meanwhile, should we confine the content of our quarterly seminar on negotiation to a purely practical or a purely theoretical approach?

But a purely practical approach to training is limited to anecdote and the memory of similar circumstances. Collections of anecdotes that relate how others dealt with similar or analogous problems could be offered as a training tool but would not be enough if that were all that was offered. A purely anecdotal approach to practical problems is limited in three ways: the manager might forget the appropriate anecdote to guide him in his current circumstances; he might apply an inappropriate anecdote to his problem; he might never have covered the appropriate anecdote in his training and be at a loss as to what to do. What the Shell electricians did to protect the unskilled components of their work might, or might not, help a manager negotiating a price reduction with an established supplier, but even if there were analogies at one level there were bound to be profound differences at another. An inability to take the profound differences into account, as seen by the busy manager, compromises the credibility of the anecdote.

Alternatively, a purely theoretical approach in the seminars would suffer immediately from a fall off in the size of the constituency of potential clients. Practical people usually recoil from too heavy a dose of abstract reasoning. 'Assume that your opponent is rational…', says the theorist, and risks being interrupted by the manager with: 'How does that help me with the militant leader of an unofficial strike over alleged insults to his religion?'. Plainly it cannot help him without a great deal of additional work, inclusive of patience on both sides, for which time is often not available to busy managers.

Theoretical analysis, however, can clarify a complex situation and provide effective guidance for practical action. There is, of course, no case for believing that theory is of no use to practical people: the theory of geometry helped people improve on round mud huts by enabling them to design and build structures from different regular and stable shapes. But to make any theory useful we must be selective. Theorists too can learn from practical examples by analysing data on the patterns and unique relationships of real world negotiations and using them to improve their crude models of reality. In negotiating skills education and training, those theoretical models that have practical relevance can help negotiators to clarify, and improve their understanding of, the patterns and relationships of their practical experience. An education and training programme, therefore, built round a selective blend of theory and practice has an important role in helping negotiators to improve their performance.

From this background, while presenting a series of negotiation skills training workshops to managers at Scottish & Newcastle Breweries in Edinburgh in 1973–4, I took advantage of the opportunity to work with a number of professional negotiators to develop, literally from scratch, an entirely original approach to negotiation training. Initially, I kept the workshops to the same format we had developed at Brunel, but gradually I introduced a significant difference. In addition to talks on aspects of negotiation, supported by anecdotal material from business and industrial relations and video evaluations of participants negotiating cases from the real world, I introduced a model of negotiating based on the concept that all negotiations had a common process. The model divided the negotiating process into the distinct steps of **Preparation**, **Argument**, **Signalling**, **Proposing**, **Packaging**, **Bargaining**, **Closing** and **Agreeing**. Originally I called it the '8-Step approach', but, through the accident (!) of having to compress the eight steps for a 30-minute training video, it became, and has remained, the 'Four Phases of Negotiation' (**Prepare**, **Debate**, **Propose**, **Bargain**). In addition, I set out, by experiment, observation, practice and the contributions of the managers who attended the workshop, to discover the appropriate behaviours negotiators could use to improve their effectiveness, and these materials were introduced throughout the series. By 1976, the 8-Step approach model dominated the entire contents of the workshops for the brewery managers and proved to be a successful device for integrating theoretical ideas about interactive behaviour (from social psychology, sociology, anthropology and economics) with information (and some advice) on how negotiators behave in practice. In 1980, the 8-Step model entered the public domain in a book I co-authored, *Managing Negotiations* (Hutchinson Business Books, 3rd edition, 1988), followed in 1983 with an exposition of the Four Phases version in the video, *The Art of Negotiation* (Longman Training), an interactive version of which appeared in 1988.

With the 8-Step/Four Phase approach and selections from relevant academic work on negotiation, the blend between theory and practice was achieved, and in the intervening years this approach, in various guises (and a few disguises!) has become the dominant teaching method on negotiation skills courses in the UK. Teaching courses on negotiation are now included in the MBA degrees in many of the major business schools in the USA and Europe. Myriads of short courses for managers now include negotiating skills in their offerings, and books and tapes by the shelf-full have been published since 1980. Where once the notion of a course on negotiation was not taken seriously by senior academics (the reason that I left the polytechnic in 1971), it is now almost a sign of academic integrity to have a negotiating course included in the syllabus. In the USA, negotiation programmes (and their presenters) have achieved considerable eminence. For example, the Harvard University Negotiation Project is a pace-setting management programme, diffusing its graduates and its teaching methods to colleges across the USA (alas there is no equivalent programme yet in Europe). In short, the activity of negotiation is no longer a neglected phenomenon, which everybody experiences but few ask questions about. It is a subject worthy of study in its own right, with worthwhile benefits to theorists and practitioners alike.

In preparing my contribution to the Edinburgh Business School MBA programme, my mind's eye sees you, the reader, as someone who has achieved

competence in some specialism, and who, with ambitions to increase your managerial responsibilities, now wants, or needs, to acquire education in general management and administration. In order to do so, you need assistance in selecting from the numerous concepts and techniques of analysis. This modular text on Negotiation will help you in much the same way that I was helped by the practical men and women on both sides of the negotiating table at Shell-Haven in 1970–2 and in Edinburgh in 1973–4. They showed me what was relevant in what I knew as an academic and what I needed to know to become competent as a practical negotiator.

The style of the text is very much as a conversation between myself as the author and yourself as the reader. It is like the language of a consultant discussing a series of issues and problems with his client, though of necessity, in our unique circumstances, I shall be forced to interpolate what I think you would be asking me if we were in live contact, and if my statements do not answer your questions or my questions do not have interesting answers for you, I can only hope that this occurs on a minority of occasions.

Each Module is structured in the traditional Greek manner into three parts: the **Prologue**, introduces the theme of the module and sets the scene for the argument that follows, usually in the form of a short scenario of a negotiating problem, and often with an exercise for you to complete; the **Dialogue**, presents the argument and the imagined discourse through which we work our way together, by way of concept and example drawn from the variety of possible negotiating positions and dealing with the potential difficulties associated with each individual position as they arise; the **Epilogue** draws together the threads of the argument and summarises the whole.

Self-assessment questions are included to test your understanding of the concepts in the module, and my answers allow you to assess your own responses. All of the exercises and self-assessment questions are supported by my suggestions as to what constitutes appropriate answers. You need not agree with my suggestions and you are perfectly entitled to prefer your own. What you are expected to do, however, is to refrain from cheating, either by dodging the exercises and my suggestions altogether or by reading my answers before you attempt your own. Neither cheating strategy will help you improve your own negotiating performance. You will learn more by working your way systematically through the problems and by comparing your answers with mine, and, whatever conclusion you come to, by understanding why we agree or differ. The exercises are part of the learning process and not just a way of filling up space!

Module 1

What is Negotiation?

Contents

Prologue

1.1 Introduction

George, Vice-President (Sales) at Phoenix Enterprises, looked forward to finishing at 5 p.m. and catching the 7 p.m. plane to Bordeaux where he was to join Lucy, his wife, and their three children on their annual holiday. Three days earlier, on Friday, Lucy had gone on ahead with the children to the villa they had rented for three weeks, while George stayed behind to complete a special assignment given to him on Thursday afternoon by Dan O'Reilly, his boss and Chief Executive Officer. Dan had told George to check over their contract with Pascoe Projects, a client company, regarding their proposed joint venture to build a business park on the edge of town. The contract documents were in a total mess, and Dan wanted to have them sorted out and analysed for Tuesday, when he was due to meet Pascoe's Managing Director and see if he could negotiate amendments to their contract. There was no way that George could check over a contract of this complexity before he went on holiday. There were just too many files and background papers, plus several sets of changed drawings and altered specifications. George apologised to the children for the unscheduled interruption to their holiday and promised a skeptical, and somewhat angry, Lucy that he would work all over the weekend to sort out the problem and would join her on Monday evening at the latest.

George was by no means happy that Dan had done this to him and considered it an unsatisfactory situation that work should intrude on his holiday. It was not as if the problem had arisen from one of his own accounts. It properly should have been handled by Fred, Vice-President (Contracts), who was off sick, and who, to cap it all, had been promoted a year ago to Con-

tracts Manager on the strength of winning the Pascoe account. Because Pascoe Projects was an important account, George knew that Dan's negotiations could not be postponed until Fred returned from sick leave and he accepted that somebody had to step in and clear up the mess. His pride in being chosen (once again) to trouble-shoot somebody else's difficult problem was tempered with his dismay that it would add to his domestic stress (there had been other occasions when he had been compelled to let his family down for work-related reasons). He knew he had no convincing answer to Lucy's charges that he 'paid more attention to Dan than to his family', and he fully expected that his holiday might be ruined by recriminations arising from Dan's thoughtlessness.

Now imagine yourself in George's position on Thursday afternoon when the boss calls on you to work over the first weekend of your annual leave. How do you feel about that? As annoyed as George? Well, we don't know what George said or did when he heard Dan's instructions; we only know that he worked through the weekend. If you had been faced with a similar instruction from your boss, how might you have reacted? What could you do to make yourself happier in this type of situation both at work and domestically?

Exercise 1A

Write down your answers on a separate sheet of paper, numbering them 1 to 10.

My suggestions follow, in no particular order of priority. George could:

1. Tell Dan that his holiday was contractually sacrosanct and refuse the assignment.
   Question: What would this have done to his career prospects?
2. Suggest to Dan that somebody else should undertake the assignment and use good arguments to support his suggestion (perhaps appealing to Dan's sense of fair play?).
   Question: What happens if he fails to persuade Dan to change his mind?
3. Suggest that Dan assign somebody else along with George, with whom George would work until Friday evening, and thereafter the other person would complete the task over the weekend by himself. (Perhaps he could offer to work through Thursday night?)
   Question: What happens if there is nobody else qualified to undertake the work after George leaves?
4. Tell Dan that he did not want to break his holiday in this way but that he was prepared to toss a coin with him to decide whether he should continue with his holiday plans or start work on the problem.
   Question: What happens if Dan has an aversion to a gamble and anyway sees no reason why he should put himself at a 50 per cent risk of doing without George's services?
5. Offer to do the work provided that Dan paid his airfare to Bordeaux on Monday and extended his holiday by a week in compensation.
   Question: What happens if there is no pressure on Dan to negotiate with George?

6. Ask to see the company President to adjudicate on whether Dan's assignment was a reasonable request just before his holiday.
   Question: What influence can George bring to bear on the company President before he makes his decision?
7. Threaten to resign and sue the company for constructive dismissal.
   Question: How credible is the threat and would Dan give in to it? How expensive is litigation and would he win?
8. Tell Dan he will consider it and let him know when he returns from holiday.
   Question: What happens when a decision cannot be postponed?
9. Instruct one of his own subordinates to undertake the assignment.
   Question: What happens if the junior refuses the instruction?
10. Undertake the assignment.
    Question: What does giving in cost him in a ruined holiday?

This module is about some of the options people can consider when their interests are in conflict with another's and how we might approach discussing these options.

Dialogue

1.2 Alternative Methods of Making Decisions

People make decisions all the time and they use a variety of methods, mostly without thinking about the differences between the methods, to reach and implement their decisions. We can illustrate the variety of methods available to people by considering the suggestions you came up with for George in the Prologue. Almost certainly you included some, if not all, of the ten in my list (and perhaps a few others?). Each of my ten suggestions is based on a different method of reaching a decision, and we can name each type of decision method as follows:

1.2.1 Say 'No'

That is what Americans call making a 'career decision.' To reject outright a proposal usually means having to live with the consequences, unless the proposer backs off. If a man puts a gun to your head and says: 'Sign the contract or I will blow your brains out' you would surely have to have a serious objection to the terms of the contract if you persisted in refusing and he was serious about his threat. Saying 'no' and meaning it is appropriate when you cannot endure the offer but you can endure the consequences.

1.2.2 Persuasion

All selling skills are based on persuasion. If you have ever attended a sales training course you will recognise the role of persuasion in the advice to sellers to 'sell the sizzle, not the steak'. This approach can persuade someone to say 'yes' because their imagination is more likely to be fired by the image of a sizzle than the unadorned image of a steak. The advice to sell benefits, not features, is another example of the talented use of persuasion skills. Persuasion is usually the first method we choose

when we want something. When persuasion works it is a fine method, but when it does not work it often leads to tension and conflict: 'I tried to be reasonable and explained why Dan should choose somebody else, but he was not interested in my views, only in his own, which shows I was right to call him a rotten swine of a boss and he proved this by sacking me.'

1.2.3 Problem-Solve

This is not as universally applicable a method as its proponents claim (in fact, no single decision method is a panacea for all conflict situations). Problem-solving methods require a high degree of trust between the decision-makers, who also have to agree that they share the problem. If either of these conditions is absent, problem-solving breaks down when individuals 'hold back' just in case their candour is ambushed by your denial that you share their problem.

1.2.4 Chance

This is not as silly as it sounds. Some large decisions are made by the toss of a coin. For example, in a choice between two otherwise identical projects for which there are funds for only one, tossing a coin might save a lot of acrimonious argument or indecisive dithering. If you are indifferent between two events (going to the football match or watching television) you have a 50 per cent chance of enjoying either event if you decide between them by tossing a coin. Kerry Packer, the Australian businessman, chose between his lower price and David Frost's higher price for the Australian television rights to Frost's interview with ex-President Nixon by tossing a coin. The interesting feature of Packer's decision is that he allowed Frost to call 'heads or tails' over the telephone line separating Frost in California from Packer in New South Wales, and he announced that Frost had won the toss! Whether Packer actually tossed a coin or not is an interesting speculation; if he did toss the coin and Frost's call won, this makes Packer a very honest man; if he tossed and Frost's call lost, or if he did not toss a coin at all, this makes Packer a very generous man.

1.2.5 Negotiate

This is a widely used option where conditions for it exist. These conditions normally include the mutual dependence of each decision-maker on the other. If the boss needs your consent for you to do something he wants and to which you cannot unilaterally say 'no,' nor can he make you do it, it may be possible to negotiate something that meets both your own and your boss's concerns. This usually involves you getting something, tangible or intangible, in return for your consent. But if you have nothing to trade – he does not need anything you have, including your consent, nor does he have anything in his gift that would persuade you to consent – then negotiation is unlikely to be appropriate.

1.2.6 Arbitrate

When decision-makers cannot find a basis for agreeing, and provided they can at least agree on who is to be the arbitrator and that his decisions will be accepted, they

can choose arbitration. The building and construction industry uses formal arbitration procedures to settle the many disputes that arise over increases in costs and variations in specifications after the contract price has been agreed. It is also used in commercial disputes between countries (for example, through the International Chambers of Commerce system, known as INCO terms) and has a role in several industrial relations systems (for example, in the Federal Arbitration Award system used in Australia). Though widely used, arbitration is also abused, particularly when the parties reject the arbiter's award, or when one of them demands arbitration merely as a device to improve the other party's last offer by letting the arbiter split the difference. This abuse has been overcome by the Pendulum Arbitration system which requires the arbiter to choose one or other of the party's claims, rather than award some compromise between them. The problem for George is how to appeal over Dan's head without compromising his own relationship with the company. Dan's boss might take a dim view of managers who do not work 'above and beyond' the call of duty and he might take just as dim a view of Dan for failing to manage his own people; the former inhibits George from going over his boss's head and the latter inhibits Dan from letting him. George also has the risk that the arbiter's decision would be the same as Dan's.

1.2.7 Coercion

Threats lie on a continuum from a gentle reminder that you have an option through to a declared intention to use violent intimidation to get your own way. Various degrees of coercion are common in many conflict situations, for example: a union reminding the employer that its members voted unanimously for tougher action in support of their demand (adding: 'Only our authority is holding them back, so give us something to put to them to defuse the crisis'); or a banker warning that any repetition of issuing cheques without proper overdraft facilities will result in their bouncing; or a government warning a neighbouring country that unless it acts to stop terrorists getting onto flights it will ban all flights from that country. Of course, using coercion to achieve desirable decisions risks retaliation ('We will not be pushed around or blackmailed').

1.2.8 Postpone

This is a relatively common practice. Countless organisations attempt to resolve internal disputes and isolate the traumas of disagreement by forming 'working parties' or 'subcommittees', which effectively postpone the decision long enough to secure agreement, or long enough for the parties to forget how passionately they felt about it when it was first raised. But where time is of the essence – the shipment has to leave by 4 p.m. to catch the last flight to Oman – postponement may not be an option. Indeed, in some situations, an attempt to postpone a decision could be interpreted as a form of coercion, or simply as an underhand refusal to agree.

1.2.9 Instruct

This is the appropriate choice when the person instructed is obliged and certain to carry out the instruction. Managers do not normally expect subordinates to question

their instructions when their instructions are within the terms of their relationship. Telling the chauffeur to drive to a downtown restaurant at lunchtime ought not to provoke a conflict if that is what the chauffeur is paid to do and lunchtime is within his working hours. (It might provoke conflict if we are instructing him to drive into downtown Kabul!) The efficacy of instruction rests entirely on the probability of the instruction being obeyed. If it is unlikely to be obeyed – we need their consent – we must switch to another method. For example, instructing children to go to bed is not always successful and parents often resort to other methods – persuasion, negotiation or coercion – to overcome a challenge to their authority.

1.2.10 Give In

This is what we do when we accept an instruction. Giving in is not as weak an option as it sometimes seems (or as it is presented by people who perceive themselves to be 'tough guys'). I regularly give in when the odds are overwhelming (the man with the gun means business) or the costs of doing otherwise are excessive (to argue will take up more time than I have to spare on resisting doing what I am told). Every time you buy an item at the seller's asking price, you are giving in, and it makes sense to do so if you cannot abide the alternative of doing without the item. Supermarkets do not normally negotiate on the prices of their groceries, and if they were to do so it would extend by hours the arduous chore of weekly shopping, with people waiting in checkout queues while those ahead of them completed their haggling over the prices of their trolley loads of shopping. Faced with this consequence most people who shop regularly would give in, and find a competing store that arranged its pricing system to minimise the time they had to spend waiting to go home.

Exercise 1B

Now go back to your own list of the options you decided were open to George. How would you classify each of your suggestions according to those in Table 1.1?

Table 1.1 Ten alternative decision methods

Number	Method	Corresponding number in your list
1	Say 'No'	
2	Persuasion	
3	Problem solve	
4	Chance	
5	Negotiate	
6	Arbitrate	
7	Coercion	
8	Postpone	
9	Instruct	
10	Give in	
Others not listed above		

For each entry you made, decide what type of decision it is and note its number alongside the corresponding entry in the table.

Your list almost certainly will have been written in a different order to mine (which does not matter because the order is irrelevant) and you may also have duplicated one or two of your suggestions by giving different examples of the same decision method. This too does not matter too much as long as you can identify the method. The importance of this exercise is for you to recognise that there are at least ten methods of making decisions potentially available to you in conflict situations.

Each of them emphasises a different approach, each has strengths and weaknesses, and each has different consequences. In your daily interactions you switch between these alternatives to suit the circumstances as you see them. As an adult you have considerable experience of choosing between these methods and of recognising which method is being used by somebody else on you. Not that you and the people you deal with always get it right! For example, you might attempt to instruct somebody and in consequence have your ears assaulted with the noise of their outrage at your insult, or you could arrive at the meeting willing to listen to reason but react angrily at their unnecessary attempts to coerce you into submission.

Observation shows that people are adept at choosing different approaches to conflict but it also shows that their choices are not always appropriate to the circumstances. They are not confined to using one form of decision-making in particular circumstances when switching to another might move things forward. A

sales sequence could begin with persuasion (selling benefits, not features, and answering the buyer's objections). The sales pitch could confine itself to persuasion if persuasion were sufficient to win the order. It could as easily move into negotiation when buyer and seller discuss the terms under which the buyer's decision, in principle, to buy is matched to the seller's willingness to sell. It could also slip into a gentle form of coercion, as when a seller warns a buyer, even though he does not need steel for the moment, that unless he places an order immediately for the special steel he requires he will miss the current production run at the rolling mill and he will have to wait another three months before his order can be placed (and for good measure, he will face a price increase as well). Those skilled in persuasion are not immune to slipping into some degrees of coercion. For example, many an attempt by credit control to collect money from debtors begins with gentle persuasion and ends in ungentle litigation.

Hence some situations involve switching in and out of several alternative methods sequentially in a short space of time. This is important to negotiators because it helps if they can recognise which method is being used at a particular moment. For just as each method is appropriate in some circumstances and not in others, so some methods are not appropriate when they operate against each other. For example, if you rely stubbornly on persuasion to win over a meeting to your point of view, and your opponent switches into credible threats to intimidate the meeting into compliance with his wishes, you might find the meeting slipping away from its inclination to support you. Alternatively, you could decide to give in to a specific request from the other negotiator, only to find that this act of goodwill did not lead to a solution. Instead of reciprocating your offer to give in with some movement on his part, he might take your giving in as a sign of your weakness and promptly demand more! From similar mismatches of decision methods more than one negotiation has collapsed.

1.3 What is Negotiation?

Negotiation is only one of the ten forms of decision-making listed in Table 1.1. As with all the alternatives it is neither superior nor inferior to any other of the others. Negotiation, like its alternatives, is appropriate in some circumstances but not in others. What are those circumstances?

First, a few paraphrases of the thoughts of Adam Smith, author of *The Wealth of Nations* (1776). Smith remarked that nobody had ever seen two dogs negotiate over a bone. Dogs, and other animals, fight for the resources of food, mates and territory, and having gained them, usually have to fight to hold on to what they get. If you have ever seen seagulls swooping over each other to get at some bread tossed onto the water by a small child, you will have noted how they chase the lucky one to get the bread first, apparently in the hope that, by forcing him to twist and turn to avoid collision, he will drop the morsel and give them a chance to snatch it away. Be clear I am not moralising about this. Nature is neutral and trifling with it is dangerous. Smith noted that mankind had developed alternative methods for allocating resources to those used by animals. At least this was true, he believed, of the civilised nations – Smith reserved a long contempt for 'barbarians' who decided on

the allocation of resources by methods akin to wild animals (the 'Genghis Khan school of wealth creation'?).

It was the human capacity to 'truck, barter and trade' that made civilization possible, and when people voluntarily exchange things they have for things they want, they create wealth. That is how most of us in urban industrialized economies get what we want – we sell our labour services to employers, who use our services to produce the output which, in aggregate, accounts for most of the things we all want. We use our earnings from employment to buy what we want from those who own what has been produced.

Decisions are often made by some form of negotiation between the various parties to these exchanges. When we sell our labour services we must agree the terms under which we do so, both the terms of the wage we can expect to get and what the manager expects us to do for his money. Neither the employee nor the employer can achieve anything much without the other. True, you can decide not to work for a particular employer if his offer is too low, and he could decide not to employ you if your demand is too high, but in the aggregate across all employers and all employees, output can only be produced if enough employers and employees agree on the specific terms for working together. Of necessity, because each party depends on the consent of the other – neither can dictate the wage rate the other prefers – the terms of employment are set by negotiation and are changed by negotiation.

Producers earn their income by selling their output to customers, and if they continue to produce output for which there are no customers at the prices they set unilaterally, ultimately they will be ruined. It is similarly ruinous for customers who cannot obtain output at the prices they are willing or able to pay: ultimately they will starve to death. Both producers and their customers, therefore, depend upon each other: for producers there is no income without customers, and for customers there is no consumption without producers. The terms under which customers acquire from producers the things they want – food, clothing, music centres and jacuzzis – are decided either by 'take-it-or-leave-it' prices set according to the producer's marketing judgement, or directly by some form of negotiation with the customer. Customers negotiate passively when they 'shop around' and actively when they ask for a better deal than the one on offer.

Most producers sell their output to other producers and prices are set for them mainly by negotiation. For example, electricity is sold to manufacturers to run their machines and large consumers are invited to negotiate bulk discounts on the standard tariff; car manufacturers who expect to negotiate price and performance standards for CAD-CAM computers they buy from companies that buy company cars, also expect to negotiate fleet purchase deals for their cars; meanwhile packaging machinery manufacturers negotiate the purchase of packaging for their spare parts service with companies that buy packaging machinery. And so it goes on between producers throughout the economy.

For every transaction there is a buyer and a seller. Some buy whatever the price, others only buy at specific prices. Most buyers and sellers buy some things without

questioning the terms, some things they buy grudgingly, and for some things they haggle and make the seller work for every penny of his price.

For a few people, willfully determined not to be dependent on anybody else and, therefore, as determined not to trade anything with anybody, their future, whatever else it might bring (such as spiritual peace?), includes a high probability of an extremely low standard of living. Provided they adjust their expectations, and therefore their wants, downwards, they could enjoy a state of affluence, albeit at near zero wants. For others, more the victims than the perpetrators of their circumstances, who have absolutely nothing at all to trade, their lives are blighted to degrees beyond the consciousness of most of us. You will never be so poor, materially or in spirit, than you will be if you have nothing, absolutely nothing, to trade for your wants. If, however, you do have something to trade but not on a specific occasion to a specific person, or on their offered terms, you can keep your property (including your labour services) to yourself and leave him to go about his business while you trade with somebody else.

In the main people do not plunder their neighbours for their wants, because the state ensures, through the rule of law, the peaceful enjoyment of your own property. (In Smith's day they had the draconian punishments of hanging or transportation for what today are regarded as relatively trivial transgressions of the public peace.) The state, as its 'first duty', protects you from the depredations of your neighbours, whether they live next door or across the border.

Negotiation has developed as the process through which the activity of trading and exchanging tangible or intangible things between people is conducted. Its underlying principle is expressed in the statement: 'Give me some of what I want and I will give you some of what you want'. It differs from instruction and coercion, precisely in the way that it employs the principle of voluntary exchange between two parties who cannot, for whatever reason, either take what they want, or get what they want, unless they accommodate in some way to the wishes and desires of each other.

The basis for negotiation in an economy is replicated in the affairs of governments and international agencies. No society has restrained its state to an absolutely minimal role. All states do a great deal more than merely ensure that the people can enjoy their property and freely enter into agreements to acquire their wants. A substantial proportion of the economy is directly managed by or for the government (in the UK the proportion is over 40 per cent of Gross Domestic Product, with a lower proportion in some other capitalist economies and a much larger proportion in some previously socialist economies). The government and its agencies negotiate to buy and sell labour services (the civil service, the armed forces, the judiciary, etc.) and output (the public infrastructure, medicines, school pencils, etc.) on much the same basis as private producers do in the market economy.

Governments also make political decisions through processes that include negotiation: two cabinet ministers might negotiate over a problem of overlapping jurisdiction between their departments; the parliamentary whips might negotiate with a maverick backbench MP before a crucial vote of confidence; two leaders might negotiate a basis for collaboration between their parties; and so on. On the

international front, governments negotiate on all manner of issues. In fact there is evidence that international negotiations between governments are on the increase. Over 50 000 international agreements between governments have been negotiated in the 20th century – so far. These are increasing at the rate of over 1000 a year (up from 550 a year in the later 1940s). Nobody knows exactly how many international agreements there are. Some agreements between governments remain secret and are only revealed when there is a change in regime (the secret protocols agreed between the Soviet Union and Germany in 1939, for example); others are either of a minor nature and attract no attention, or they are informal, as between two governments who agree to support each other in an international forum on a single issue (as France and Germany have done regularly in the European Union).

The pre-Second World War League of Nations published 205 volumes of Treaties before its demise, and the United Nations series ran to 1000 volumes by 1987. With about 250 international organisations operating around the world, and the pressure to extend their powers, because of environmental concerns for example, and pressure to set up new ones (such as within the European Union to centralise banking), we can expect the number of negotiated agreements to keep rising throughout the next century.

Negotiations do not always end in an agreement. Those making a decision by negotiation usually have the option of choosing some other solution, of saying 'no', of walking away, of minding their own business. If their consent is required for an agreement to be reached and if they cannot agree, then no agreement is made. They cannot be forced to agree, for if one of them can force the other to agree, it would not be a negotiation (and anyway, why would a person negotiate with somebody else who has no choice but to obey his instructions or to furnish him with what he wants?).

Any two dogs fighting over a bone are in conflict over a scarce resource. They have no means of finding a basis for co-operation. Humans can co-operate when they are in conflict by negotiating an agreement. They can also go to war (the two dogs' solution) if they cannot find a way to co-operate, or if their attempts at co-operation result in deadlock. Negotiating, then, is about finding out if there are terms for co-operation that are acceptable to both parties.

1.4 Advising Negotiators

Dan O'Reilly, the Chief Executive Officer of Phoenix Enterprises, called the meeting to order and asked George, his Vice-President (Sales), to discuss negotiations with Pascoe projects by filling everybody in on where the contract stood at the moment. George moved to the overhead projector and flashed up slides detailing some of the terms of the original contract negotiated by Fred, Vice-President (Contracts), who, fortunately for him, was still off on sick leave.

'I will begin with my conclusions and support them by describing what appeared to have happened at a series of meetings between ourselves and Pascoe held some six months ago,' began George. 'I see two problems with

this contract,' he continued. 'First, it locks us into a deal which is conditional on Pascoe achieving planning permission but does not set a termination date for them to get the necessary planning consents through, and second, we do not get paid for our land or our share of the development profits, unless and until Pascoe builds the business park and secures tenants for it,' he concluded.

The news did not get any better throughout his presentation as he minutely dissected the Pascoe contracts and cross-referenced them to the correspondence and copies of minutes of meetings he drew from a box beside him. George did not comment on what he found, he laid no blame and made no suggestions. He stuck to the facts as he had found them.

'OK, George,' Dan intervened, 'that's the situation as it stands and it is worse than I thought it was. What I want to know is what can I do about it when I meet Pascoe's people tomorrow. We have 12 million riding on this deal and whatever, or whoever, screwed up this contract, I need advice from all of you as to what I should do before I meet the President of Phoenix in an hour's time. He is none too pleased, I can tell you. So let's go to it. Rodney, what do you think?'

Rodney, Vice-President (Administration), was sitting at the end of the boardroom table and generally regarded himself as Dan's number two (a pretence that annoyed George). As usual, he jumped in with what he thought Dan wanted to hear: 'Well, I think we should brazen it out with Pascoe and tell them that unless they quit stalling on acquiring planning permission, we'll call the deal off. What have we to lose if they call our bluff?'

'Everything,' said George. 'It took me four days to check over the contracts and the minutes of Fred's negotiations, plus his correspondence, to discover what was wrong. If Pascoe has not yet discovered that they have us over a barrel, taking Rodney's line will sure as hell make them smell a rat and put somebody onto doing what I did. No. It's best not to arouse their suspicions. They are more likely to come to a sensible change in the contract that way.'

The meeting rumbled on with everybody having their say. Some of Fred's team from contracts disputed George's descriptions of what Fred had actually agreed to and reported on their conversations with Pascoe's people in support of their claims. These quibbles did not move George and he stuck by what was actually written down, knowing that alleged nuances of meaning not backed by documentary proof would not impress the courts if they were sued for breach of contract. Rodney continued to press for a tough line at the negotiations and claimed that he knew Pascoe would crumble if they were pushed hard enough, as they had done when they ran over budget on the Riverview project.

George finally proposed a more subtle ploy. He suggested that what was needed was a written confirmation, no matter how tentative, from Pascoe that the contract implied a termination date for planning permission. Dan could use this to pull out of the contract if Pascoe failed to deliver the

necessary permissions by the implied date. Dan wanted to know exactly how he could get them to confirm a date to which they had never agreed.

'It won't be easy,' answered George. 'For a start it must be done almost as an afterthought. Ask them, at some point, how the planning permission is coming on and, if they are vague and do not offer a date, ask them when they think it will be passed. They are bound to say something that can be construed as a date, even if they talk of something vague like "three to six months". Note whatever they say and later ask them to send to you the usual note of the meeting's discussions. Also, begin to refer in all our correspondence to the date they give as the start date of the project. This gives you what you want.'

'I like that,' said Dan. 'Very good. I'll put it to the President right away,' and saying so he got up and moved towards the door, adding, 'George, come to my office in half an hour and I'll fill you in on what I've agreed with the President, and by the way, stand by to come with me tomorrow to Pascoe's.' Before George could answer, Dan had left the room, leaving George thinking about what he was going to say to Dan about staying on another day and about the taxi waiting downstairs to take him to the airport and his holiday.

Exercise 1C

From what you have read in this module you should be able to make several suggestions as to what George could say to Dan when they meet in half an hour. List them quickly on a separate sheet of paper before reading on.

What would be useful now is for you to re-examine the above scenario and see if you can identify the different approaches to the Pascoe problem taken by Dan, Rodney, Fred's team and George.

The most basic of the approaches was used initially by George at the invitation of Dan to report on where Phoenix stood in respect of the contract. George was invited to **describe** the negotiations that had taken place using examples from the contract and other supporting documentation. Description is about what actually happened in a specific negotiation. To give an account of what each negotiator said to the other during the negotiations between the Chinese and British governments on the return of Hong Kong to China in 1997 would be pure description. This is exactly what George was asked to do in respect of the Pascoe negotiations.

In principle, description is neutral and does not go beyond stating what happened, but in practice it is often controversial. Fred's colleagues, for example, disagreed with George's account of what happened, presumably, and almost inevitably, taking it as a criticism of themselves.

Description does not preclude analysis. We could, for example, count the number of occasions in which one negotiator interrupted the other (just as we might count the number of penalties awarded by the referee in a hockey match). Analysis can be highly sophisticated and yet remain descriptive.

A descriptive approach to negotiation is a rich source of evidence about what real negotiators actually do and how they actually interact. Minutes and transcripts of

negotiations and the personal accounts and memoirs of negotiators (suitably sanitised to eliminate personal bias) provide much of the evidence used by the other approaches. Before we can prescribe, or predict, a minimum amount of description is normally required.

When we move from description to prescription we move from describing what actually happens to what, in our view, *ought* to happen. When Dan stated his needs: 'I need advice from all of you as to what I *should* do before I meet the President of Phoenix in an hour's time', his use of words tells us he was asking for prescriptive advice from the meeting. Of course, the views he will get as to what ought to happen are usually subjective and they often depend entirely on the interests of the advisor. Note how Rodney's views were coloured by his perceptions of his relationship with Dan and what he believed Dan wanted to hear.

Prescription can be based on objective analysis or opinion. Perhaps what the advisor recommends is feasible. If, from many observations of negotiators at work, we note that those negotiators who do not allow others to state their views without constant and irritating interruption usually have great difficulty in reaching agreement, we could prescribe the advice that if you want to reach agreement it is better not to interrupt in this manner. Our prescription is about what you ought to do – avoid interruption – if you want to achieve an agreement. In my view it is generally feasible for negotiators to adopt such prescriptive advice about interrupting. It does not follow, however, that all individuals accept and implement this prescription. Your experience of the other party could lead you to reject the prescription. Perhaps by interrupting these particular negotiators you will produce positive results, or, perhaps being a congenital interrupter of every negotiator you deal with, you are immune to contrary advice!

A question as to why an advisor feels that something ought to happen will indicate whether his belief is based on his personal prejudices or whether it is founded on any credible evidence or experience. Is his prescription based on hidden assumptions about human behaviour in general ('People are basically motivated by fear'), or similar assumptions about an individual negotiator in particular ('Tomski only submits to brute strength')?

Prescription is closely related to prediction. For example, when Rodney continued to press for a tough line (prescription), he claimed that he knew Pascoe would crumble if they were pushed hard enough (prediction). Rodney claimed he had evidence for his prediction (the Riverview project), but not all prediction is based on hard evidence (and not all 'hard' evidence stands up to the test of relevance). For example, if we assume that all human beings are rational and seek to maximise something called their welfare, we might predict that faced with a choice between a definite gain in their welfare – an increase in pay, say – and a definite larger loss of income if they reject the offer and go on strike, they will accept the offer to avoid the loss. Our prediction ('They won't strike') leads to our prescription for the employer: 'You ought to stand firm on your offer'. If we get it wrong and the employees take the loss and strike, those who acted on our advice, with hindsight, will wish that they had subjected our prediction and its assumptions to closer scrutiny. This neatly illustrates how a prediction about the likely result of taking the

wrong advice becomes a prescription, particularly for negotiating situations: 'You ought to scrutinise the basis of the advice you receive before you act upon it'.

Description, prescription and prediction are different, yet overlapping approaches and, by recognising which is being used in discussions about negotiation, we can assess the relative credibility of contributions to the pool of advice.

Exercise 1D

Assess each statement below and write down whether you believe it to be true or false before checking with the answers in Appendix 2.

1 Prescriptive advice can always be followed.

2 Description is always biased.

3 Prediction cannot be tested.

4 Description is compatible with analysis.

5 Prediction is also prescriptive.

6 Prescription is always subjective.

Epilogue

Some people think of a skilled negotiator as someone who can bluff and double bluff his way to whatever he wants. He is a schemer, a manipulator of others and hardly to be trusted. Ice-cold blood runs through his veins and he has a heart made of stone. In politics, his name would be Machiavelli; in personal relations, Casanova.

None of these images concur with our view of negotiation or of how effective negotiators approach their work. Everybody negotiates, sometimes for momentous issues but mostly for trivial everyday things. We bring the same range of personality traits (and blood temperatures!) to our negotiations as we do to the other parts of our lives. If by nature you are a schemer then no doubt you will continue to scheme when you negotiate, but most people you negotiate with will not be schemers, though they may suffer from other afflictions to their personality. Negotiation is one among several options you have when you are attempting to make a decision with another person. You should think of negotiation simply as a decision process and not as a mysterious set of behaviours best left to those skilled in office politics or jungle fighting. You can become competent in negotiation without compromising your sense of ethical conduct.

We negotiate because our decisions affect others and their decisions affect us. Individuals do not wish to leave decisions that affect them to the whim and fancy, not to mention material benefit, of somebody else. In feudal times everything was arranged by order of the monarch and enforced by his barons, and people knew their place (and were violently reminded if momentarily they forgot it). Church and

State laid down their path through life from birth to death. Order prevailed and stability reigned at the price of personal liberty.

The liberal democracies have since inherited much of the earth, or at least the richest part of it (yes, there is a connection!), and with their liberalism has come the demand to have one's interests accounted for in the decisions others take. This occurs in every family, every community and every area of activity from school to corporation. Where people insist that their consent be obtained before a decision is taken, the conflicting notions of what the decision is about must be reconciled. In politics we call it democracy, in economics the free market, in justice the rule of law; in all its varying manifestations the most common process used to achieve voluntary consent is what we call negotiation.

Negotiation has a long history, perhaps even a pre-history, as the early humans found forms of co-operation that signalled the beginning of an ever widening difference between them and the animals outside their caves, who knew of no alternative to fighting for what they wanted. But long as its history is, negotiation has only recently come into its own as an appropriate method with a potential for use in almost every sphere of human contact. It is no accident that the number of international agreements is growing each year, that commercial contracts are negotiated by the million (the UK Ministry of Defence alone negotiates over 40 000 contracts a year with 10 000 contractors), that the new professions of mediators, conciliators, arbiters and consultant negotiators are growing in numbers across the USA (with Europe a little way behind), that more and more legal firms are turning to negotiating settlements rather than merely litigating their claims, and that there is a growing interest in the theory and practice of negotiation. The age of negotiation coincides with the spread of pluralistic democracy and growing international economic and political integration.

Because people are freer, they will not accept arbitrary instructions to the degree they did only a generation or two ago. Employees reject the heavy hand of misplaced managerial or union power as much as they reject the blind obedience their parents and grandparents conceded to authority in all its guises. Consumers look for better deals, again with the USA in the lead. Whereas over 90 per cent of consumers in the UK accept fixed prices for the goods they buy, and retailers oblige by only running so-called 'bargain sales' for a few weeks of the year, less than 20 per cent of US consumers, and less than 40 per cent of Australians, accept the fixed nature of prices. The consequence is that in the USA and Australia retailers vie with each other for the consumer's dollar in what can only be described as a permanent '52-week sale'. The spread of discount stores in Europe is one sign that the consumer's quest for a better deal than the one he is offered is beginning to take off.

To call this the age of negotiation risks underestimating the importance of other methods of decision-making that have also expanded in the second half of this century. For example, persuasion has enjoyed a substantial boost in the form of multi-billion pound sales and marketing activities. The buyer is wooed – and not just over price. The take-it-or-leave-it indifference of the local monopolist (state or private) has succumbed to the competitive option afforded by the globalization of markets. Total quality programmes that settle for nothing less than zero defects in

output shipped to customers are a common corporate culture. Marketing techniques have dug deep into human psychology to find ways to persuade the buyer to want what the seller is offering. Persuasion through the, sometimes questionable, techniques of public relations management has enjoyed a boom and is now an essential component of corporate and political success, and of damage limitation when things go wrong, as in environmental disasters, political peccadilloes, and legal embarrassments.

The swing has been away from people giving in to coercive methods and the acceptance of dictatorial instructions towards persuasion, problem-solving, mediation, arbitration and negotiation, which have in common varying degrees of voluntary consent. The spread of negotiation, therefore, should be seen in this broader context.

Module 2

Distributive Bargaining

Contents

Prologue

2.1 Introduction

Mary wants to buy a used car. John is offering to sell his used car, for which he is asking £7000. Mary does not want to pay as much as £7000 but she is prepared to go as high as £6550. Though John has asked for £7000 Mary assumes he is prepared to sell the car for something less, but 'by how much less?' she wonders.

Exercise 2A

From this description of the situation, would you advise Mary to:

a. Open close to her highest price of £6550?
b. Open much lower at around, say, £5550?

Consider the answer you believe most appropriate on the information you have above before reading on.

2.1.1 The Alternatives

Answer (a)

Suppose Mary decides to open close to the highest price she is prepared to pay of £6550, at, say, £6350. What could happen? John would compare her offer with his undisclosed lowest price and, if her offer were higher, he would know that he was going to do much better than his worst expectations. This could encourage him to remain firm for his opening price – he has nothing to lose and it is one way in which he can test Mary's resolve.

Opening close to her highest price could also cause her additional problems. Mary, by making a relatively high offer, might merely provoke John into being more

resolute in defence of his opening demand of £7000. Or worse, if Mary makes her offer *before* John tells her that he is looking for £7000, she might provoke him into believing that he can do much better than £7000 and thereby motivate him to increase his opening demand to, say, £7550. Mary reasonably could react negatively to John's response, though it was provoked by her own actions, and she could decide that, because John has demanded £1000 more than the highest price she is prepared to pay, there is little likelihood of an agreement. The result? She takes her business elsewhere, ending up without the car, and John loses a prospective sale.

Answer (b)

Can Mary do better by opening well below her own highest price? She does not want to open with an offer well above John's lowest price because then, whatever deal they came to, she would not be doing as well as she might have done, particularly if John's lowest price were much lower than her opening offer. One way to avoid this happening is for her to set her own opening offer well below the highest price she is prepared to pay, just in case she inadvertently goes too far above the lowest price John would accept for the car. But this advice has drawbacks too. Suppose John's secret lowest price was £6450 and Mary opened with a low offer of £5450; what might happen? John could feel compelled to seek another buyer. Why? Because her opening offer is £1000 less than his minimum aspiration, and £1550 below his opening demand of £7000, and he is antagonized by the discrepancy. Mary's bold low opening offer tactic leads to deadlock, and she ends up without the car, even though we know she could have bought it for John's lowest price of £6450, which is less than her own highest price of £6550.

2.1.2 The Best Strategy

In theory, Mary's best strategy is to persuade John to disclose how little he is prepared to accept, without her disclosing how much she is prepared to pay. But John's best strategy is the reverse: to persuade Mary to disclose how much she is prepared to pay without his having to disclose how little he is prepared to accept. However, how can Mary get John to disclose his lowest price? Not without some difficulty, if John is wary of making disclosures that undermine his negotiating position. Mary appears to be caught in a dilemma. If she opens too close to her highest price she risks paying more than she needs to; if she opens too far below her highest price she risks antagonising John into a deadlock.

Experience shows that Mary's dilemma, when it is a single-issue negotiation and no other considerations are involved, has no obvious solution. Having decided on an opening price you must also move the other negotiator towards your price, while you move towards his price, in the certain knowledge that what you gain in a lower price as he moves towards you, he loses in the higher price he might otherwise have secured. In these contests there is a 'winner' and a 'loser' and people do not like losing. Both negotiators could end up unhappy with the outcome, one because he paid more than he wanted, the other because he got less than he wanted, i.e. it is a lose–lose outcome. To avoid this outcome, both strive hard to make the other do the moving.

Fortunately for the used car market, if not the self-fulfilment of buyers and sellers, people do agree on the prices they pay or receive for their cars. Otherwise they would remain so paralysed with the dilemma of where to open, that they would fail to complete the transaction. The dilemmas faced by Mary are felt by negotiators around the world on issues large and small, but because negotiators have to open somewhere at some time to make progress, their dilemmas are overcome in practice.

This module is about the single-issue negotiation between two parties, such as a negotiation between you and your bank manager about the extent of your overdraft, or between you and your children about how much television they can watch tonight, or between you and your neighbour about the decibel level of their house party. By starting off with the seemingly simple negotiation of two parties over a single issue, we can make a lot of progress quickly in our search for answers to practical questions, like: 'Where should I open my offer?', 'How long should I continue negotiating?', and 'When should I cut my losses and stop negotiating?'

Dialogue

2.2 A Simple Diagram of the Buyer/Seller Dilemma

What we need is some means of generalising about the dilemmas of any single-issue negotiation, whether it be the price of something, or the wording of a clause in a contract. We also need a simple diagram to clarify the negotiator's dilemma and what, if anything, can be done to ease it.

In negotiation we start with at least two solutions (yours and mine) to the same problem; our objective in searching for an agreement is to end with only one solution, if we can. In the car case the single-issue was: '**What is to be the agreed price for the used car?**'. There are two prices to begin with: the (low) price Mary prefers to pay and the (higher) price that John prefers to receive. If the car is to be sold there can be only **one** price for the car, and that price must be agreed to by Mary and John.

A negotiator opens with what I shall call his **entry price**. This is the price he prefers if he can get it. He can set his entry price to cover a mark-up over his costs, or from a 'gut feeling' he has for, or some detailed knowledge of, what the market will bear, or from a consideration of tactics, or for any other reason he likes. Wherever he opens, for whatever reason, is his entry price. The gap between the entry prices of each negotiator I shall call the **total negotiating range** (*see* Figure 2.1).

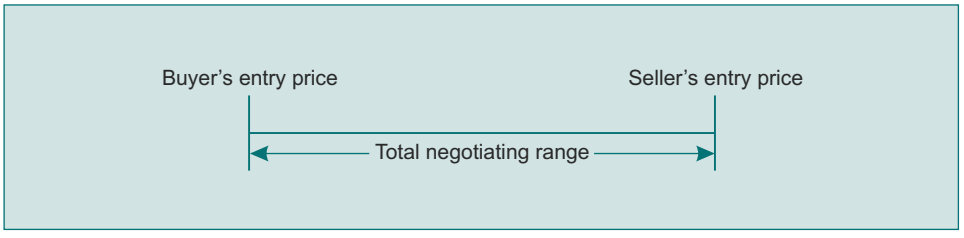


Figure 2.1 **Entry prices**

How can they reach agreement if their entry prices are separated by a negotiating range? The negotiating range implies **distance** and the need to come together implies **movement**. The image of a distance between them is echoed in the language you will hear negotiators use to explain the progress, or lack of it, in their negotiations. They say things like: 'After 12 hours of talks, we are still a long way apart'. The idea of movement is similarly highlighted in statements like: 'At our last meeting considerable progress was made as the parties moved closer together on some issues but not on others'. Neither of these images implies that movement is inevitable; quite the contrary, movement in negotiation is often grudgingly undertaken and after a great deal of effort. Negotiators are less like ice-skaters and more like rock climbers!

Movement in negotiation from their entry prices is essential if they are to agree on a common price. Hence, they do not open with their final price. They give themselves 'negotiating room'. They expect, or prefer, the other negotiator to move towards their entry price, but they accept that it is unlikely that the other negotiator will move all the way. Some reciprocal, though not necessarily equal, movement will be expected. As a British union official, Joe (later Lord) Gormley, once put it: 'I see labour negotiations as both sides walking towards each other', adding, typically, that he expected the employer to 'walk with larger steps and more quickly' towards the union's position than the union would move towards the employer's.

How far, or how fast, the negotiators will walk towards each other depends on a lot of factors, but there is some limit beyond which they do not intend to go in the current circumstances. This point I shall call their **exit price**. It normally lies somewhere in the negotiating range between the entry prices of the negotiators. In Figure 2.2 the total negotiating range lies between 100 and 130, and the highest price (115) the buyer is prepared to pay is less than the lowest price (120) that the seller is prepared to accept, i.e. their exit prices do not meet. The negotiators will try to move each other to an agreed price higher than 100 and lower than 130, only to discover that when the buyer is close to 115 and the seller is close to 120 they experience great difficulty in making further progress. Unless one or the other revises his exit price, they will fail to reach an agreement.

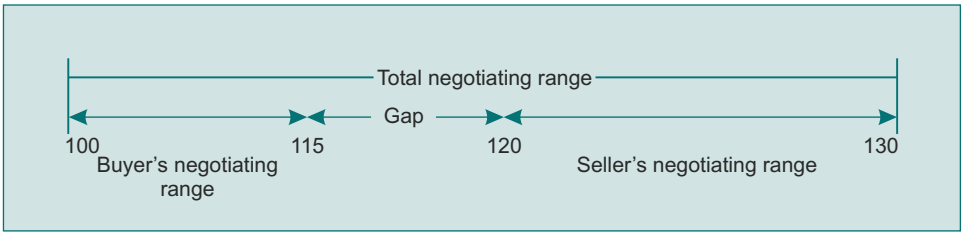


Figure 2.2 A gap between the negotiators' exit prices

The essential condition for a single-issue negotiation to be successful is for the exit prices of each negotiator *at least* to meet, as shown in Figure 2.3. Here, the highest price the buyer is prepared to pay (120) is the same as the lowest price the seller will accept (120). If they discover this price they will reach an agreement.

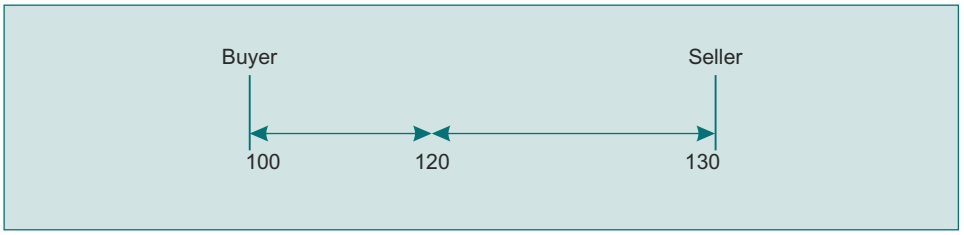


Figure 2.3 **The negotiators' exit prices meet**

The condition shown in Figure 2.3 is the **minimum** condition for agreement. Where the exit prices of each negotiator overlap as shown in Figure 2.4 they are more likely to reach agreement than when their exit prices only meet. The overlap between the exit prices of each negotiator, i.e. between the prices of 115 and 120, is what I shall call the **settlement range**, because within this range a settlement is possible, though, as always, it is not assured. (In Figure 2.3, the settlement range is the single point 120.)

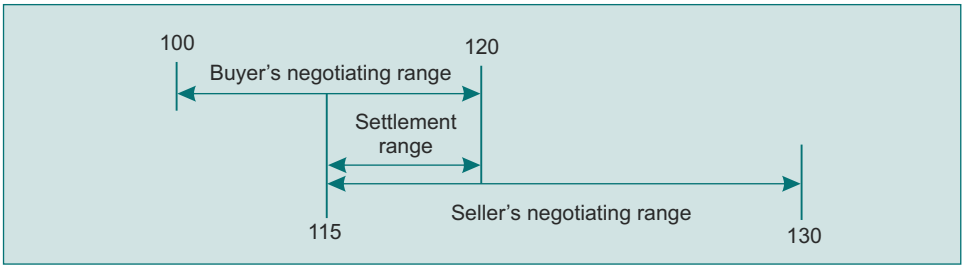


Figure 2.4 **The negotiators' exit prices overlap**

Suppose the buyer offers to pay 116, which is within the settlement range and just above the seller's exit price of 115, would the seller accept this offer? Though it is possible that he might agree, we cannot say he will for sure. He might if he believes that the negotiation is likely to take up time which he would rather spend on something else, or if he believes that this is as far as the buyer will go. He might not if he thinks he has other alternatives.

He could, for instance, decide to keep negotiating because, with an entry offer of 116 on the table, he knows now that he will settle higher than his exit price of 115. This could motivate him to keep trying to improve the buyer's price and see just how far he will go (unknown to the seller, the buyer is willing in principle to go as high as 120). On the other hand, by delaying a settlement he might fall foul of the buyer's impatience: perhaps the buyer only opted for a price of 116 to force the issue; perhaps he is less keen on buying now and has no wish to use up more time moving slowly towards his exit price of 120. Alternatively, he could feel that, as he made a 'generous' offer of 116, the next move should come from the seller and not from him. You can readily accept that out of such misunderstandings a lot of aggravation can be stimulated.

In general, as neither negotiator knows the exit prices of the other, they do not know whether the current offer is final or whether it is a prelude to a better price

('Does he mean "no", or is he merely testing my resolve?', thinks the wary negotiator).

Moreover, when a negotiator discloses his entry price he also implies something about his exit price which, in some circumstances, can be disadvantageous to him. Consider the situation in Figure 2.5. Here the negotiators have individual negotiating ranges of an unusual kind. First, think of the seller's point of view. He has an entry price of 115 and an exit price of 100. Suppose *before* he offers to sell at 115, the buyer cuts in and offers to buy at 120. What effect do you think this would have on the seller? Whatever else it does, it ought to cause him to pause before he responds. As the buyer's entry price of 120 is larger than the seller's entry price of 115, the seller now knows that the buyer is prepared to pay more than the maximum price he expected to receive. What would you do if somebody offered you more than you expected to receive? No doubt you would be inclined to accept this generous offer. (I hope though that you would hesitate before jumping in with a 'yes' to a buyer's first offer!)

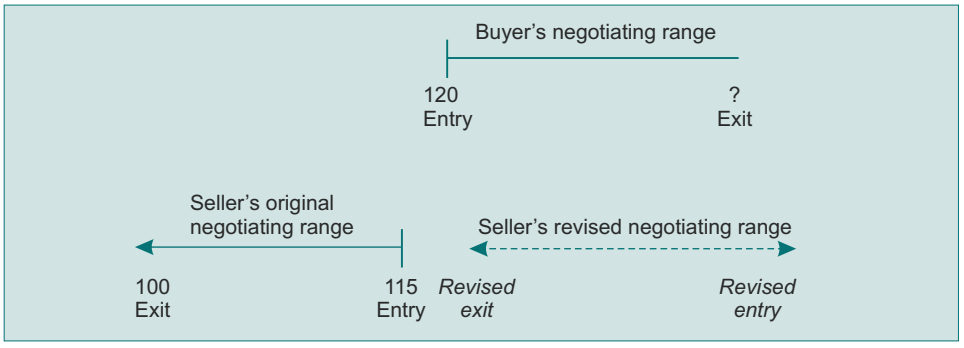


Figure 2.5 **Negotiators with overlapping entry prices**

Because the seller knows that a buyer's exit price is bound to be larger than his entry price, he knows that the buyer is prepared to pay even more than his opening offer of 120, though he does not know by how much the buyer is prepared to increase his offer. In my view, the seller's best response here would be to reconsider his own, as yet undisclosed, entry price. This has the effect of moving his individual negotiating range to the right, as shown by the dotted line in Figure 2.5. His new exit price, in my view, should be at least 120 (the buyer's disclosed entry price) and he should consider just how far he should open *above* 120 to flush out the buyer's, hopefully, higher exit price.

It could be, however, that the buyer opened at 120 in order to force a quick decision and that he has no intention of spending any more time haggling over the price. For him, perhaps, 120 is a 'take-it-or-leave-it' offer. This still ought not to affect the seller's initial reaction (note my prescriptive advice). I am sure that you would agree that it would be silly for the seller to open at 115 *after* an offer of 120 from the buyer was on the table. Therefore, it seems sensible to advise him to test the buyer's resolve by opening with an entry price higher than 120. Most sellers would tend to do this, unless, of course, they are intimidated by the buyer's threat of 'take-it-or-leave-it' and steer clear of arousing their wrath. Despite this, however, I

still recommend that you always challenge an allegedly firm price from anybody, even if you feel it necessary to disguise your challenge in the nicest of possible ways.

Buyers are unlikely knowingly to open at a higher price than the sellers think they can get, though they might unknowingly do so. The price for anything depends on what it is worth to a buyer and it is a wise seller who knows the value of everything to everybody else. When other negotiators disclose that they are prepared to pay more than you expect, it makes sense to revise your expectations. You might have missed something in your valuation; circumstances may be changing that you should be aware of; or you could be 'giving away the store' without realising it (if you don't know your business, you can be sure your rivals will teach you it!).

'The Run-down Bar Negotiation'

The owners of a building in a run-down block in downtown Sydney were anxious about the financial state of one of their bar businesses. The profit from the bar did not cover their monthly mortgage costs on the building and the running costs of the bar. They had cut staff to reduce costs but this only worsened the service and reduced sales. They were also under pressure from the public authorities to rebuild the toilets as these were below standard. The building needed a complete external renovation and at the very least it needed repainting.

After much debate between themselves, the owners decided to put their property on the market and sell it as a 'going concern'. They calculated that to repay their original investment and cover their losses they needed about $200 000, but knew they would be very lucky to get $190 000. To see what offers they could induce, they tested the market by advertising a purchase price of $230 000 for the bar business and the building. While they received some interest, most potential buyers were unwilling to commit themselves. The one real offer they received fell far too short of their expectations to make negotiations worthwhile. The owners became more anxious to sell as their financial situation deteriorated, and as they were subsidising this business from the profits of their other operations, they became increasingly keen to release their capital and use it more profitably elsewhere.

A prospective buyer approached them, who clearly had little, if any, knowledge of the bar trade. Having asked some questions, as well as nominally looking through their books and having the building surveyed, he made an offer to purchase for the asking price of $230 000. Meanwhile, the owners received an order from the city council for them to upgrade the kitchens at a cost of $70 000 or face the loss of their trading licence. This prompted them to accept the offer without further delay.

After buying the building, the first thing the buyer did was shut the bar business down. The last thing he did was sell the building for redevelopment for $3 million. What was going on?

The owners of the bar complex thought they were selling a liquor business to a naive entrant to the liquor trade, when, in fact, they were naively exiting from the real estate business they did not know they were in.

Exercise 2B

From the description above, draw a diagram representing the relationship between the entry and exit points of each negotiator. (My answer can be found in Appendix 2 at the end of the book.)

2.3 The Negotiators' Surplus

If I am prepared to accept a price for my property between, say, £150 000 and £250 000, this defines my negotiating range. The existence of this negotiating range implies that I am effectively willing to accept as much as £100 000 *less* for my property if I sell it to you at £150 000 instead of my top price of £250 000. Conversely, if I achieve a price of £250 000 I have settled for £100 000 more than the least I would have accepted. All prices between £150 000 and £250 000 will divide the difference between us of £100 000 into the amount I give up by accepting less than £250 000 and the amount I keep by persuading you to pay more than £150 000. Naturally, I would prefer to keep as much of the £100 000 as possible (preferably all of it!), which is equivalent to saying that I prefer to settle at, or close to, my entry price.

This simple notion can be extended into a useful analytical tool by considering the arithmetic of the settlement range created by the overlapping negotiating ranges of the negotiators. Figure 2.6 shows the settlement range from the example discussed in Figure 2.4. The seller's exit price is 115 and the buyer's 120, i.e. the seller is prepared to accept a price as low as 115 and the buyer is prepared to pay as much as 120.

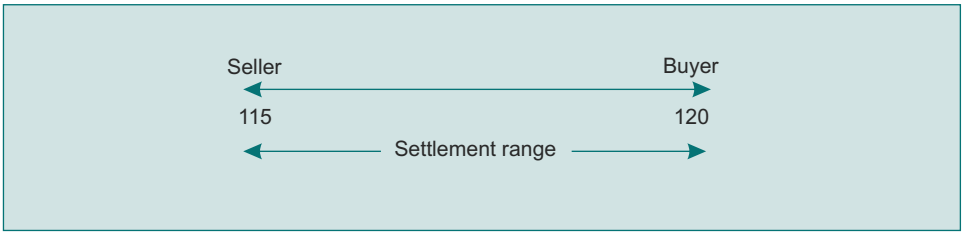


Figure 2.6 The settlement range

Any proposal from the buyer to settle at a price less than 115 would be absolutely unacceptable to the seller; any proposal from the seller to settle at a price above 120 would be absolutely unacceptable to the buyer. Any price between these two prices, including these prices, could be a **settlement price**, which I shall designate as P*. The seller wants a price that is greater than 115 and the buyer a price below 120. The difference between any settlement price P* and the seller's exit price (which I shall designate as S) is the **seller's surplus**; any settlement price P* that is less than

the buyer's exit price (which I shall designate as B) is the **buyer's surplus**. Together the buyer's and seller's surpluses constitute the **negotiators' surplus** (*see* Figure 2.7). By surplus we mean the amount the negotiator gets to keep from his negotiating range by not settling at his exit price.

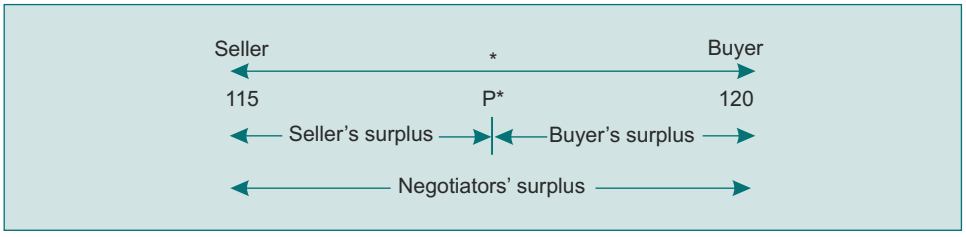


Figure 2.7 Negotiators' surplus when exit prices overlap

In a negotiation the seller and buyer are effectively seeking agreement upon the distribution between them of the available negotiators' surplus (120 − 115 = 5). Hence, in Figure 2.7, P* − 115 = seller's surplus, and 120 − P* = buyer's surplus. If P* was 117, the seller's surplus would be 117 − 115 = 2; and the buyer's surplus would be 120 − 117 = 3. (Note that 2 + 3 = 5: the distribution of the surplus between them exhausts the negotiators' surplus.)

Logically it is necessary for the seller's exit price to be lower than the buyer's exit price, i.e. in symbols S < B, for there to be a settlement range. The negotiators can only distribute the available surplus between them by agreeing to a common price, P*, within the settlement range. A failure to agree on the distribution of the available surplus leaves them both without any surplus from that negotiation. In these circumstances, they will have to search for another negotiator to realise the available surplus.

It is worth commenting on what appears to be an unusual situation where deadlock arises even when the negotiators offer to accept prices that fall within the settlement range. In practice, this is not as irrational as it seems. It is, for instance, fairly common during labour negotiations to find the parties in bitter deadlock over offers and demands that have moved them from their entry positions towards each other. Sometimes, in fact, they are so close to each other that it seems senseless to jeopardise everything by failing to close the gap. Why do you think the tension rises after the parties have moved in this way? Is it a case of brinkmanship? Are they afraid of being the one to 'give in'? Or has the apparent impasse brought to the surface some other consequences that intrude on the decision despite the merits of the offers and demands that are on the table? I think it is more often a case of the latter (though I do not exclude some influence from the former suggestions).

Both sides could explain to a third party mediator, brought in to help the parties to resolve the deadlock, why they cannot move from their current offer even when the other party's offer is within their own negotiating range, and they could rationalise their difficulty along the following lines:

> The union is unwilling to accept the management's otherwise acceptable offer because, from the way the management has conducted themselves during these

> negotiations, for us to do so would only encourage them to think they could get away with a more aggressive approach to discipline on the shop-floor.
>
> The management is of the view that to accept the union's otherwise acceptable demands in the light of the way they have been presented throughout these negotiations would only encourage them to believe they could get away with yet more indiscipline on the shop-floor.

Both perceptions of the effect of agreement on their post-negotiation relationships, no doubt, can be held and expressed with equal sincerity. Where the negotiators' perceptions get in the way of a settlement, as in these circumstances, more time might be required to play down the fears each side has of the other's intentions.

Sometimes negative perceptions are self-fulfilling, in that they cause one or both sides to apply sanctions (strikes and lock-outs) to coerce the other into agreement, or to warn them off from misinterpreting their willingness to agree as a sign of weakness. Alternatively, third party mediation can be tried to unlock the apparent deadlock. In fact, mediation could be defined as a method of discovering if there is an available surplus for the negotiators to distribute without jeopardising their longer term interests.

In Figure 2.7, the maximum surplus available is 120 − 115 = 5. If the seller settles at his exit price (115) he gains no surplus and the buyer receives it all; the opposite is the case for the buyer settling at 120. This explains why negotiations can be tense and fraught even when the offers are within a settlement range. As they do not normally know each other's exit price, each might perceive the available surplus to be larger than it is in fact (i.e. that the other negotiator's exit price is considerably different from his entry price). If they both persist in this belief, and pursue what they regard as a legitimate wish to acquire a proper share of the imagined surplus, the tension level could rise.

How do you know if a negotiator is being truthful when he claims that his current offer is the best he can do? The best way to tackle this kind of question is to approach it from another angle: let us ask instead what happens if you believe that the other negotiator is pretending that his current offer is his exit price. You could express your doubts about the offer with statements like: 'I know you can do better than that', or, 'Nobody can realistically expect to offer so little with the profit levels you have attained this year'. More colourful expressions are also possible, such as: 'Are you kidding?', 'Can you be serious?', and 'Do you think I am stupid?' (the last being particularly inept).

Now think of the position the other negotiator could be in if, indeed, his last offer was close to, or at, his exit point, and you are pushing him to move but he cannot. The situation for him is analogous to that of the innocent prisoner interrogated as a suspected member of a conspiracy. No amount of protestations of innocence can convince the interrogator and no amount of verbal abuse (or worse where they do not respect the rule of law) can produce a true confession from an innocent prisoner. Why not? Because the interrogator expects to hear similar

protestations from a member of a conspiracy and the more convincing the prisoner is in his protests the more it convinces the interrogator that he has a truly remarkable and talented member of the conspiracy in his hands! Likewise in negotiation: the more the negotiator protests that his current price is his exit price, the more he convinces a negotiator who is predisposed to assume that he is lying that his suspicions of duplicity are justified. A perception, once it has a hold on you, requires quite a lot of convincing to dislodge it. The result is that the level of tension between the two negotiators rises. Frustration leads to anger and in negotiation it leads to deadlock (in interrogation, unhappily, it can lead to violence).

Interestingly, the words, gestures and tone of a negotiator defending a current offer and the same negotiator defending an exit price are normally indistinguishable, and a moment's thought will reveal to you why this must be so. For if it were not, if in practice a negotiator had a different set of words, gestures and tones for an exit price to the ones he used for the other prices between his entry and exit prices, it would make the negotiation process redundant – we would simply wait for the appropriate words, gestures and tone for an exit price to be used and ignore everything else before it.

But, you could interject, would it not benefit decision-makers if we could short-circuit the often lengthy negotiation process by the device of established words, gestures and tones that signify the true exit price of a negotiator? Surely this could save time and avoid misunderstandings? This would be true if – and it is a big if – we could be sure that the people we negotiate with do not artificially use the words, gestures and tones appropriate for revealing their true exit prices to support offers which are not their true exit prices. In short, we are vulnerable to their manipulation if they learn to act as if they were at an exit when in fact they are not. This brings us back full circle.

You have no way of knowing for sure that any particular offer is as far as the other negotiator will go. You know yourself how often you are prepared to offer more, or accept less, in your negotiations, and you can take it that what is true for you is true for the other negotiator. This suggests that negotiators should always assume that the first offer is never an exit offer and you should, in consequence, refrain from treating a first offer as if it were (hence my prescriptive advice above not to accept even generous first offers!). It follows that all offers should be treated as if there is another, last or exit, offer in reserve.

Suppose the seller's last offer was 121, which is above your exit price as a buyer of 120, then clearly $S > B$ rather than $S < B$, and a settlement is not possible. Suppose now, after some more time, that the seller makes a new offer of 119.5. There is now a settlement range, because the seller's latest offer brings P* just below your exit price ($S < B$). Should you as a buyer settle for this (small) amount of surplus, or should you push for it to be increased by persuading the seller to reduce the offer price even lower? As you normally do not know where the seller's exit price is – it might be 119, it might be 115, or even 110 – you do not know for certain the time required to reach a settlement and whether your rejection of his offer will lead to sanctions.

The broad strategy for the seller is to move the settlement price, P* in Figure 2.7, to the right as close to the buyer's exit price as possible; the buyer, meanwhile is trying to move P* to the left as close to the seller's exit price as is possible. But normally neither of them knows each other's exit price and therefore they cannot be certain that the price they settle on within the presumed settlement range is the absolute best they can do. As a negotiator approaches his exit price he will increase his resistance to further moves towards it, and behaviours associated with increasing resistance (a firmness in his language, more aggressive assertions about what might happen if agreement is not reached, and general irritation and bad temper, etc.) might be a sign that his exit price is looming; but how can you be certain that the observed behaviours normally associated with increasing resistance are nothing more than a ruse to bluff you into settling where he is, rather than an indication that he is approaching his exit price? The answer is that you cannot be certain of judging a negotiator's exit price from his behaviour – negotiators learn how to act as if they prefer deadlock to moving again.

A failure to settle is not proof that a settlement was impossible, merely that one did not occur on this occasion between these two negotiators over that issue. Neither is a settlement proof that the negotiators maximised their share of the available negotiators' surplus – though they may be relieved that they settled within their limits. Perhaps if they had handled the negotiation differently, by hanging on for a little more for a little longer, they might have increased their share of the available surplus.

Epilogue

Whereas we often do not know what the other party's exit price was, it is possible to conceive of negotiating situations where both negotiators know each other's exit price, or where they can make a good guess at it. This is not as unusual as you might think. For example, we might be partners negotiating the distribution of a known commission we jointly earned from supplying a service, or we might be sharing a known prize in a lottery or even a windfall gain of a £20 note we found while walking along the street. In all these and similar cases, the amount to be distributed is the available negotiators' surplus and this amount is known to both of us – it is the total commission, the amount of the prize, the amount of profit, or the £20 note. If we fail to agree on the distribution of the surplus we get nothing until we do. Thus, our potential gain runs from zero to the total amount to be distributed.

Given we have a fixed sum to be divided, what do you think is the most likely division? In the absence of any other information which might indicate some special merit to our claims, it is likely that we would divide the sum in two equal shares. This conforms to notions of a 'fair' distribution. Indeed, so prevalent is the notion of fairness in this context that attempts by one negotiator to breach it by claiming more than 50 per cent, when no special merits support the claim, are likely to provoke strong resistance on the part of the other negotiator, even if the resultant deadlock means neither gets anything. This situation is not uncommon in bitterly contested claims of rival heirs to an estate. The contest can become so acrimonious that the competing heirs squander the whole estate in legal fees.

Fairness as a distribution principle operates most effectively where there are no asymmetries in the claims of the negotiators for their share of the sum available. Two people who put in the same amount of effort, the same amount of cash, took the same risks, and contributed equally to the idea that created the prospect of a yield, are going to be hard pressed to justify an extra share for themselves out of the fixed sum available. But if there are asymmetries in our respective claims to a share of the surplus, then we expect these to be acknowledged, particularly when each of us perceives our contribution to justify a share which is greater than half.

A concern for asymmetries in our entitlements lies behind the suggestion that to prevent these asymmetries being overlooked by a one-sided manipulation of the negotiating process, we should arrange for each negotiator to declare their price in some honest manner at the start of the negotiation rather than leave it to be inferred, and perhaps misjudged, or even misrepresented, during the negotiation. If the joint disclosure shows that $B < S$, then no negotiation need be undertaken and the negotiators can use their time for some other purpose, including seeking another negotiator with whom to do business.

What happens when disclosure shows that $B > S$? One obvious proposal could be to split the surplus in half, i.e. provide each negotiator with $B + S/2$. If we could rely on negotiators always to disclose their true exit price, it might be possible to take a short cut through some of the seemingly interminable wrangling associated with negotiating. People in a hurry might value this system. But this system, like many others which are proposed to obviate the need for negotiating, has a fatal flaw: how do we know that the revealed exit price is the 'true' exit price?

If the buyer discloses that he will pay as much as 500, the seller has the choice of deciding that no deal is possible (his own exit price is genuinely more than 500), or of adjusting his genuine exit price, say, 450 (the least he would accept), to, say, 496. If he disclosed the truth, the resultant price, P*, would be $(500 + 450)/2 = 950/2 = 475$. By adjusting his exit price from 450 to a false one of 495, he raises P* to $(500 + 496/2) = 996/2 = 498$, an increase in his favour of 23. As he has an incentive to cheat, we must assume, and the other negotiator will certainly be inclined to do so, that he is likely to cheat. In the circumstances, the first negotiator to disclose his exit price might feel it is prudent to cheat also, and reduce his genuine exit price of 500 to a false one for disclosure and open at, say, 460, in order to counteract the possibility of cheating by the second negotiator.

In the event of these suspicions being acted upon, the prospects of the attempt to curb the negotiation process succeeding will diminish, and the negotiators will be faced with resorting to the normal negotiating process.

Disclosing our exit prices simultaneously does not answer the objection totally. It certainly reduces the opportunity for a post-disclosure adjustment by the second exit price, but this does not prevent either negotiator writing down a false exit price with a view to gaining a similar advantage to those described above. Buyers will be inclined to minimise, sellers to maximise their exit prices, each hoping that the resultant arithmetic moves the other into conceding more of the genuinely available surplus. Behaving in this way, without constraint, will provoke deadlocks as each

overshoots the other's genuine exit price. Instead of time being saved, the negotiators will have taken the time to restart negotiations with others, or with each other.

Most negotiations involve no prior knowledge of the other negotiator's exit price – some involve no prior knowledge of the other negotiator's entry price, leaving you exposed to the danger of misjudging where you should enter if you are compelled to open first. Thinking in terms of entry and exit prices and of negotiation and settlement ranges helps to clarify the problem, and to set out the negotiating tasks in specific cases. The strategic problem of uncertainty about the values and interests of the other negotiator can be addressed by looking for clues as to what determines where, and why, the other negotiator is likely to place his entry and exit points. People do not set their goals arbitrarily – they relate them, albeit often loosely, if not remotely, to their perceptions of what they are entitled to in the situation they are in – and searching for the basis of their goals is essential if we are to prepare for what they might look for when they attempt to do business with us.

Do not underestimate the powerful background effect of the notion of equity in the distribution of a surplus between the negotiators. It pervades a great deal of the thinking people have about what is, and is not, a good deal for them. Bearing this in mind when you are analysing a distributive negotiating problem should prove fruitful. Let me give a short example of what I mean.

Usually we must decide on the distribution of a surplus *before* the activity that creates the surplus is undertaken. Here the relative keenness of the negotiators to undertake the activity that generates the surplus influences the outcome.

For example, suppose you were a researcher, like Vassily, with no capital but with an idea for the commercial exploitation of a product he has developed. You might be persuaded by a venture fund with capital but no exploitable product to take a minority 40 per cent share (or even less) of the equity in your company you set up to produce and market your invention, the rest being retained by the fund. This unequal distribution is common in new projects which are widely treated as high-risk ventures by those with money to fund them. Vassily was so keen to get the project under way – he had spent several years working on it – that he preferred to forego an equal, or better, distribution of the equity because the alternative was to forego the project. The venture fund manager, on the other hand, was less keen than the researcher about a specific project because he had a choice of projects to invest in (or, at least, that is how he presented it to Vassily). He was solely concerned, he claimed, with the security of his investment and to accept any distribution which does not leave him with the majority of the equity to 'protect my investment' would be inequitable.

It was at this point that Vassily asked for my advice. He was concerned about the deal he had been offered and was worried about his future. He had heard of a case, he told me, where an inventor agreed to a similar arrangement with another fund and, after a year or two of suffering various personal privations while he brought the product up to a marketable standard and could see the rewarding income stream on the horizon, he found one day that the fund had sold its majority share of the equity to an American firm already established in the business. The new owners put their own team into the plant, sidelined the inventor, and made a derisory offer for his

small equity stake on a take-it-or-leave-it basis and went on to milk the profits from his invention. Vassily did not want something similar to happen to him (it was less a case of money than of personal pride).

I told Vassily that we had to find a distribution of the equity that met both negotiators' objectives, because if it did not meet their objectives, then one or both would refuse to consent to the distribution. Vassily wanted to borrow funds to develop a marketable product which he would own; the fund manager wanted to earn profits on his capital and protect his capital base. I suggested he propose a formula that changed the distribution of equity over time in step with the profits it earned.

The distribution of the equity could start off at 60:40 in favour of the venture fund. As the joint venture earned profits, Vassily could use some of his share of the profits to buy back equity from the venture capitalist for an agreed price. In the extreme he could use all of his profits (perhaps topped up with borrowing from other sources) to buy back equity. This would meet the venture capitalist's concerns about the security of his investment and would provide him with a profit on his capital. The price of his equity at each successive round of purchase would rise with the increasing profitability of the joint venture, thus assuring him of a profit on his investment as well as of its security, and, in the absence of profits, but with a continuing desire of Vassily to acquire equity, would assure him of extracting his investment at its par value over time.

Clearly, the buy-back clauses in such an agreement would have to be drafted very carefully. So would the entry and exit points Vassily chose before the negotiation. If, strategically, he accepted the fund manager's argument about protecting his investment until it made profits, then Vassily would automatically have to accept a minority stake. He could open at 49 per cent and work downwards. His exit point could be established by considering how long, at his share of the projected profits, it would take him to buy back a majority stake. The higher the profits, the quicker he could buy back any given difference between his exit point (assuming he was pushed to that level) and 51 per cent. By narrowing the gap between his agreed share and 51 per cent Vassily would make that task easier. He could also avoid the situation the other inventor got himself into by specifying that the fund manager could only sell his shares to Vassily at a price that related their value to the company's profits.

Setting out the negotiating problem in the form of distribution diagrams helped clarify what was at stake for Vassily. As we analyse more and more complex negotiating situations involving several and not just one negotiable issue, we will find the basic structure of the single-issue diagram of great help in revealing the options open to us in our negotiations. Several negotiable issues, when linked, are the key to successful negotiation.

Module 3

Preparation for Negotiation

Contents

Prologue

3.1 Introduction

Farmer Jones has a very restricted diet. He is a subsistence farmer who grows nothing but potatoes, which is his sole source of food. Hence, he has potato porridge for breakfast, boiled potatoes for lunch and roast potatoes for dinner. In between, for his morning break he has a potato sandwich with a mashed potato filling and for his afternoon break he has a plate of potato soup. In consequence, you can imagine, Farmer Jones is pretty fed up with potatoes.

Farmer Jones considered his predicament and decided to do something about it. He filled a sack with some of his potatoes and, after considerable effort, he carried the sack on his back two miles along the road to his neighbour, Farmer Morgan. He offered Farmer Morgan a deal: 'Trade me something for my potatoes'. Farmer Morgan was most impressed with this offer and enthusiastically agreed to a trade. He told Farmer Jones: 'I will trade you your sack of potatoes for my sack of potatoes'.

Exercise 3A

Is Farmer Jones likely to be as pleased with this deal as Farmer Morgan appears to be? Will he agree to the swap?

From the information you have been given, I hope you agree that it would be highly unlikely that the answer to these questions would be anything other than 'no'.

But before you dismiss the issue as a trivial one, be assured that it is necessary to explore why Farmer Jones (or anybody else in similar or analogous circumstances) would be unlikely to agree to a trade. In the answer, obvious as it may be, lies the essence of negotiation.

Farmer Jones is unlikely to swap a sack of potatoes for another sack of potatoes because his motivation to trade arose precisely from his desire to eat something other than potatoes, of which he has plenty already. If the result of a trade with Farmer Morgan was to acquire another sack of potatoes he might just as well have avoided the physical effort of transporting his potatoes. Why Farmer Morgan offered to trade his potatoes for Farmer Jones's is open to conjecture, though, except in the case where farmer Morgan perceived there was a difference between his and Farmer Jones's potatoes, we might as well resort to Schiller's barb that 'against stupidity even the Gods battle in vain'.

Farmer Jones, however, is wasting his time and effort if he seeks to trade what he already has, and does not want, for more of the same from somebody else. Instead, he would be more likely to be looking for something entirely different, which in his case could conceivably be almost any other kind of food that Farmer Morgan has available for trade (such as cabbages, cauliflowers, parsnips, apples, bacon or beans, etc.). **The only decision the two farmers have to make is to agree on a rate of exchange of Farmer Jones's potatoes for whatever Farmer Morgan offers in trade.** But be absolutely clear: no trade will take place unless they exchange what each has for something different. (Would you trade an ordinary two pound coin for another ordinary two pound coin?)

Exercise 3B

Try some more questions with 'obvious' answers:

Could Farmer Jones have avoided his wasted effort in attempting to trade with Farmer Morgan and still serve his original purpose of varying his diet:

a. by hawking his potatoes round all of his neighbours until he found somebody with something to trade?
b. by asking Farmer Morgan what he would trade besides potatoes before he lifted the sack?
c. by checking with all his neighbours as to what they might offer in trade for a sack of potatoes?
d. by advertising his willingness to trade potatoes with anybody providing the offered goods were suitable and the terms were right?

Farmer Jones might still have wasted his time by hawking his sack of potatoes around his neighbours – perhaps they are all potato farmers – and this would leave him no better off in the exchange but worse off in the expenditure of his energy.

Exercise 3C

Can you distinguish the activities (b), (c) and (d) from (a)?

All of them involve him in some form of **preparatory** activity before he commits himself to the physical effort of carrying his potatoes around in search of a customer.

Asking Farmer Morgan what he has for trade (b) enables Farmer Jones to decide whether to go ahead, and if so, to agree terms, before he reaches for his potatoes; asking his neighbours what they might have for trade (c) gives Farmer Jones the opportunity to test if there is a wider range of options available than what Farmer Morgan is willing to offer; advertising his interest in a trade (d) widens yet more the catchment area of people who might have even better deals on offer, in which case he may prefer to deal with them, or introduces him to those who might have similar deals on offer, in which case he knows that the local deals on offer are representative of the market price for potatoes.

In short, the activity of preparation reduces wasted effort and time, identifies gaps in the information needed to make decisions by trading, and establishes the criteria for judging the merits of possible traded solutions.

Farmer Jones could have avoided much painful effort and, perhaps, not a little disappointment, by some pre-negotiation activity, or preparation. So could all those others who, despite the evidence to the contrary, continue to walk into negotiations comforted by the illusion that a commitment to 'hearing what they have to say' is a sufficient act of preparation. No doubt there is an epitaph on the grave of an unsuccessful negotiator saying something to the effect that 'he departed this life saying he would wait and hear what the Lord had to say about his qualifications for a place in heaven and then think about what he should do to qualify'.

Preparation, of course, takes time, but invariably it is time well spent. In fact, I would go further and assert that much of the time spent in face-to-face negotiation is prolonged because negotiators, while ready to 'hear what the other side has got to say', are not able to respond sensibly to what they hear without doing the preparatory work they avoided before they met them.

Far from a negotiation being a carefully scripted exchange between people who know what they are doing, it is often a most confusing interaction in which the parties appear not to be sure of what they want or why they want it solely in the form they have asked for it. Moreover, life and negotiations are full of surprises. People often ask for things you do not have, on terms you cannot afford and on time-scales that are impossible to meet. The usual reaction when we hear things that disturb us is to attack the source of the disturbance – which in negotiation risks a counter-attack – instead of setting to work professionally to secure what we want on terms that are satisfactory to both of us.

Preparation does not eliminate surprises, nor does it cause both parties to stick to the agenda, or even the topic under discussion. What it does do is allow you to anticipate likely stances and demands, and to focus your attention on the potential for trade. If you are thinking about the potential for trade then you are thinking

about the potential solution, and this alone increases your effectiveness as a negotiator. If we left preparation to our good intentions we would never get it done. Time for our other inclinations will always win out in a contest with our good intentions. Most of the time most of us are just too busy to stop what we are doing, or to delay what we must do, to spend our precious time thinking about what might or might not happen when and if the people we are about to see get to the point and start talking the numbers we want to hear.

What we need then is a method of preparation that is adaptable to various time pressures – nobody is always *that* busy! – and which is flexible as to the amount of detail we have time to consider. What follows is a version of the Negotek® Preparation Planner[1], which was developed to handle complex negotiating problems, particularly where the outcome is highly prized and the parties have a fairly good idea of what they are about. On the basis that what works in the real world of professional negotiation should have value for you in your negotiations, the Negotek® preparation method should both elucidate the principles of preparation and provide you with a workable set of tools for any scale of negotiation for which you care to prepare more than half-heartedly.

Clearly, the more significant the outcome of the negotiation the more detail (and time) required to make best use of your efforts, and, while I would not insist that you applied the entire Negotek® method to a routine purchase of a shirt, I would suggest that it is more than worth your while to apply it to a major deal. However, I should point out that even a routine purchase, if only by implication, involves the analytical considerations addressed by the Negotek® Planner.

Dialogue

3.2 What Do We Need to Do First?

Jacques Duval is the Production Manager at the Reading plant of Royale, a multinational components Plc. His plant is undergoing a four-year programme of total quality improvements which aim to raise quality standards in all aspects of the company's activities by a factor of at least ten. To emphasise the importance of the quality programme to the corporate goals of Royale International, it is under the personal direction of Hans Stine, the Managing Director of Royale Europe. One of the many projects selected for major quality improvement is the 'uptime' performance of a batch of special 'chip' machines used in the processing of a mineral essential to the fabrication of highly profitable computer components.

'Uptime' is jargon for the proportion of working time that a machine or process is available for production. When machines are taken out of service for, say, routine preventative maintenance (which for chip machines accounts for 10 per cent of the available working time) their time out of service is known as 'downtime'. Any interruption to their availability is counted as

[1] Negotek is a registered trademark of Negotiate Ltd.

downtime, while their availability is counted as uptime. The rate of uptime of highly specialised and extremely expensive machinery can be critical for overall profitability in the electronics industry.

In the last complete year of service, uptime of the chip machines often fell below 70 per cent of available time, when rates of between 80 and 90 per cent were expected, and it is the intention of the quality team to raise uptime above recently achieved averages. The last three-quarters of the current year have shown marked improvements, mainly because of constant pressure on the manufacturer, but Jacques Duval is under no illusion that 'constant pressure' is a substitute for lasting improvements in performance through co-operation, rather than confrontation, with his supplier.

Jacques Duval has asked the manufacturer to visit the plant and discuss how they can ensure a permanent improvement in the uptime performance of these machines and has tasked the team working on the quality project to prepare a negotiating brief.

Exercise 3D

What does the project team need to ask first? Choose one answer from the following:

a. What is the manufacturer's liability for performance?
b. What bargaining leverage does Royale have on the manufacturer?
c. What data are available on the machines' performance?
d. What demands can Royale justifiably make on the manufacturer to improve their performance?
e. Who else makes these machines?

The five answers to Exercise 3D are discussed individually below:

(a) What is the manufacturer's liability for performance?

This may become an important task later on in the team's preparation or if the negotiations falter or deadlock, but it is not the first thing the project team needs to know, particularly if it is looking for a negotiated rather than a litigated solution.

(b) What bargaining leverage does Royale have on the manufacturer?

Assessing bargaining leverage is also a task for later on in the preparation phase. Too early a concern with leverage can lead to too early a reliance on leverage rather than trading.

(c) What data are available on the machines' performance?

'In God we trust; all others must use data' is excellent advice for all negotiators. The first task of a preparation session is to identify the data relevant to the negotiation and, before doing anything else, to arrange to collect and analyse it. Good causes have been foiled by lack of data, or the sloppy collection and analysis of data, and even by the total incomprehension of the data.

Relying on general statements ('These machines are always going down'; 'Your maintenance people are never here when we want them'; 'Your performance is abysmal' and so on) leaves the negotiator vulnerable to real data and to the question: 'What evidence do you have to support these complaints?' (in the absence of which question Royale's remarks are more likely to lead to an argument). If you can answer the question with supporting evidence you are closer to a solution than if you cannot: 'Here is a record of the uptimes for all the machines for the last eight quarters which show an average uptime of under 70 per cent'; 'The phone logs to your maintenance section for the last 21 call-outs show an average response time of three working days against a promised response time of four hours'; 'The industry norm for these machines is an average uptime of 86.7 per cent a quarter against your best uptime rate for your most consistent machine of 68.7 per cent for ten days'. Without data we are wasting our time, and worse, we are unlikely to get what we want.

(d) What demands can Royale justifiably make on the manufacturer to improve their performance?

Royale cannot make demands until they know the extent of the problem and what form it has taken. This brings them back to data. Hunches are no substitute for proposals that address the actual problem they have and not the one they have chosen out of ignorance of the facts.

(e) Who else makes these machines?

Interesting in general and perhaps ultimately something we might need to know but hardly relevant in the immediate future as Royale are unlikely to replace all these expensive machines in one go; hence, for the immediate future they are tied into finding a solution to the actual problem they have with the machines they have from the supplier they have. Suppose that upon investigation they discover that their own maintenance procedures or their own operators' usage is the main contributory cause of the machines' downtime? Until they know the facts, finding out about other sources of supply cannot be a priority.

It does not really matter what it is that you are planning to negotiate about, if you do not have data you cannot do much but hope for the best. If you were planning to buy a car you would be advised to check out prices for similar models from as many sources as is convenient (garages, newspaper advertisements, specialist magazines, television programmes and such like) and to see what critics have said about the make and model you are considering. Similarly if it is a house purchase or any relatively expensive item. We are seldom experts in the products we buy and a lack of data only compounds our ignorance.

Large organisations require their purchasing procedures to include detailed reports on the market for the products they are contemplating buying and on the firms that are attempting to sell to them. This has implications, of course, for those trying to sell to large organisations.

The mere collection of data and its analysis does not give a negotiator a clear run at achieving his objectives. Data in negotiation is almost always controversial. Your

data leads you (or is led by your selection of it!) to support your proposals; the other party is likely to place your data under close scrutiny in order to challenge your version of the most suitable or equitable solution.

The data required by the project team at Royale consists of the uptime rates for the machines for the relevant period. After all, it is the alleged failings of the manufacturer of the machines to achieve acceptable uptimes that will be the focus of the negotiation. Without data we are negotiating about impressions, feelings and assumptions, none of which provide a firm basis for effective decision-making.

Suppose that these data corresponded to the information in Table 3.1. From the data, the basis of Jacques Duval's concerns is clear: while the uptime performance of the five machines is improving, it is still unsatisfactory in that their average performance remains below 80 per cent and individual machines occasionally drop below 70 per cent. He wants average uptime to reach into the mid-80s (it cannot go above 90 per cent because planned preventative maintenance requires downtime of at least 10 per cent). Duval considers 70 per cent availability as a minimum standard to achieve minimum profit goals; at 80 per cent or above the profit levels are maximised.

Table 3.1 **Uptime rates for five chip processing machines**

	Last Year					This Year			
Machine	**Q1**	**Q2**	**Q3**	**Q4**	**Average**	**Q1**	**Q2**	**Q3**	**Average**
A	47*	68	53	72	60	78	79	81	79
B	65	34*	75	69	61	81	80	70	77
C	56	49	53	67	56	78	69	70	72
D	59	57	59	64	60	64	74	69	69
E	61	67	66	78	68	81	74	69	75
Averages	58	55	61	70	61	76	75	72	74

* These quarters were affected by operator training sessions.

What can Duval offer to the manufacturer of the machines by way of an incentive to motivate them to a sustained improvement in uptime? This is the task he has set the project team. Assuming that you were a member of the project team you and your colleagues could approach your task in the following manner.

3.3 What Are We Negotiating About?

Having collected the data in Table 3.1, and considered its implications, you would have to prepare a workable proposal to the manufacturer and/or be ready to respond to one that might come from the manufacturer. To do this you would have to decide what you wanted to happen, and given the information you have to hand and the working assumptions you can make, you must decide what you can negotiate about to achieve what you wanted. The negotiators are guided to their wants by identifying their **interests** and from their interests selecting the **issues** that will achieve those interests, and for all issues they would need to decide their **positions**, or preferably the range of positions that they will aim to achieve.

In Duval's case, their interest arises from the data: because **the profitability of chip making is enhanced significantly when high uptimes are achieved** (their interest) Royale wants to increase uptime (the issue), and the degree to which they want to increase uptime is their position. Any negotiated solution would have to address their interest; that is, by implementing the agreed solution it would serve the desired interest. Some solutions suggest themselves or arise from experience: for example, a need for higher margins through stemming avoidable losses is an interest, the policy you choose to contribute to your interest – reducing thefts from your warehouses – is an issue, and the details of your anti-theft policy – you could propose a random search policy for all personnel, for example – make up your position; to improve quality for competitive advantage is an interest, a proposed preventative defects policy is an issue and the details of policy form your position. The distinction between interests, issues and positions is of relevance when we are negotiating solutions because sometimes we can accept changes in our positions or a switching of issues to meet our interests, and it is through this flexibility that we both seek to influence the expectations of the other negotiator and are influenced in turn by them.

Interests are most conveniently found by asking 'why?' you want something to happen. Wants are what you want, interests are why you want them. If the negotiators keep their interests in mind when considering solutions – even strange or unusual solutions that might be proposed by the manufacturer's negotiators – they will test the proposed solutions solely by their relevance to how they will improve profitability (their interest) and not, for example, by who first proposed them, or whether it is a different solution to the one they had prepared.

Jacques Duval, however, will want more from the project team than a declaration of what the team perceives to be Royale's interests, important as it is to consider what these are. Enhancing profitability is all very well but the vital question is what **specific** agreements are required to achieve this interest, bearing in mind that whatever is proposed also has to achieve the support or consent of the manufacturer's negotiators by meeting *their* interests. This distinction between our interests and what we need to do to achieve them, usually expressed as the terms or conditions of the agreement, is not trivial. Many a negotiator identifies an overall interest and then mistakenly believes that this is sufficient preparation to negotiate to achieve it.

For example, it is not unusual to find negotiators describing what they want to achieve from the negotiation with statements like 'maintain the business', 'make a profit', 'increase market share' or 'reduce costs', etc. Admirable as they are, these overall interests are not negotiable in themselves. They represent the possible outcomes of a negotiation of the details by which their interests might be achieved, and it is the details – the issues and positions and the so-called 'T & Cs' – that are negotiated in the main and not the interest itself. This does not preclude the negotiators identifying another means of addressing an interest, nor, by revealing an interest, does it prevent the parties altering their perceptions of the importance of the issues and positions in respect of that interest. Indeed, some interests cannot even be disclosed in a negotiation without compromising the negotiator's credibility with the other negotiators. For instance, to declare to the other party that your overall interest is to 'avoid bankruptcy' might prejudice a negotiation over the terms

under which you disposed of a property to raise funds to avert a financial crisis: if they discover that you are close to insolvency they might act to push you to the brink of financial ruin in search of a lower price (thus ensuring your bankruptcy!).

Negotiation is a means of making decisions on the basis of data; therefore the next question we ought to address is: 'What issues and positions will deliver our interest(s)?'. Assessing the issues and positions to be addressed by a negotiation is analogous to the question sometimes asked by a business: 'What business are we in?'. In the same manner as businesses can fail to address that question in good time (and go on to fail as businesses because the market changes but they don't), so too can negotiators fail to ask in good time what they are negotiating about (and then wonder why they are stuck with unsatisfactory deals or no deals at all).

What do we mean by the issues and positions (i.e. the content of a proposal) in a negotiation? It is anything that the parties have discretion over but which must still be decided jointly by both of them – in short, it is anything over which they can trade. And anything that a negotiator trades, or can trade, is a **tradable**. (The tradables are the issues and positions of the negotiation and, for brevity and convenience, the single word tradable replaces and encompasses the need to use the two words issues and positions.) The trades they agree to (or not, as the case may be) on each issue and position are the output of the negotiation.

Mustafa owns and manages a small trading business and he is anxious before the start of the financial year, provided he can get a good deal on the dedicated software, to upgrade his computer system from the Pomme Marcel HD to the new Pomme Marcel IIx, which has a list price of $17 950. Bertrand, the local Pomme agent, has offered Mustafa $7060 as a trade-in for his old Marcel HD and an unspecified warranty on the new computer. He has also offered a finance package set at 4.5 points over current bank base rates and has mentioned possibilities of 'sweeteners' in training and maintenance.

Mustafa has $5000 in cash available to support the purchase and must borrow the rest, or all of it if he uses his cash for some other purpose, from his bank or from Bertrand, net of what he could get from selling his old system. From *Pomme Marché*, the monthly magazine for Pomme owners, Mustafa noted that dealers are offering to buy second-hand Pomme HDs at prices ranging between $7266 and $7600, depending on their age and condition. He has also checked with his bank and they are unwilling to lend him cash for this purchase at under 3 points over base rates (they feel that his current borrowings are close to their safe limits).

Mustafa and Bertrand are due to have another meeting to discuss the terms of his acquiring the Pomme Marcel IIx.

Exercise 3E

What are the tradables in Mustafa's pending negotiation? List your answers (their order is not important) on a separate sheet of paper before reading on.

The tradables in the negotiation are those issues and positions that both Mustafa and Bertrand have to agree jointly. Tradables are not merely the wishes of one of

the parties. For example, the desire of Mustafa to get a **low** price and Bertrand to get a **high** price is not in itself a negotiable tradable; the actual price they negotiate is the tradable. Whether Mustafa acquires a Pomme Marcel IIx or not depends on whether he and Bertrand can decide on an acceptable price and not whether that price is regarded by either of them as being either low or high (in the context of their interests). Nor is the desire of Mustafa to acquire, or the intention of Bertrand to sell, the Pomme Marcel IIx a tradable. Their intentions are the reason for, and not the subject of, what they negotiate. The outcome is the terms (the position) of the sale or purchase (the issue); it is those terms that you negotiate, not the intentions of the negotiators.

You should have included in your list some or all of the tradables given in Table 3.2 (any differences in your order are not important). Each of the tradables in the table was mentioned in the scenario. They are, of course, only the main headings of the tradables to be discussed, and there are numerous subheadings to be considered as well, as Mustafa and Bertrand will discover when they get down to details. For instance, price is a main heading which could have subheadings such as what deposit is to be paid with the order, when full payment must be made, and whether there is to be any retention money held back by Mustafa to ensure that the new system is working before he completes full payment. Tradables like 'training' need to be subdivided into who gets trained, how many people are trained, what they are trained in, how much it costs and where the training takes place.

Table 3.2 Tradables in Mustafa's computer deal

1	Price of the Pomme Marcel IIx
2	Price of the traded-in Pomme Marcel HD
3	Amount of loan from Bertrand, if made
4	Interest rate above bank base rates
5	Amount of cash, if any, put up by Mustafa
6	Training to use the Pomme Marcel IIx
7	Duration of warranty
8	Software
9	Maintenance
10	Delivery

On each of the tradables listed in Table 3.2 both Mustafa and Bertrand have to negotiate a common decision: there can only be *one* price, *one* trade-in, *one* loan, and *one* interest rate, etc. The list of tradables they have to agree upon before a deal can be struck constitutes the agenda of the negotiation.

For many negotiations the main tradables can be identified fairly easily. Hence identifying the tradables should not prove too onerous. But even where it is easy and quickly completed, it is worth the effort because it is very easy to miss minor tradables rushing to settle what appear to be the most important tradables at that moment, only to find that it is the so-called minor tradables that later loom in importance. People, for example, often concentrate on the obviously important

tradable of the price of something and neglect to cover themselves on seemingly unimportant tradables such as warranty (who pays for uplifting the appliance if it needs attention? how long is the warranty for? what exactly does it cover – parts and labour? labour only? parts only?).

For routine negotiations – those, for instance that you engage in on a regular basis – there is a tendency to narrow down the focus of the tradables you negotiate and gradually to neglect what appear to be peripheral tradables, which if left uncovered in the negotiation can leave you without adequate protection. Discovering that you are not covered for an urgent call-out for an emergency repair could cost you dearly when the supplier invoices you for his shockingly high emergency call-out charge (when you need a plumber, you *need* a plumber!). This suggests that you should also prepare for routine negotiations by identifying the tradables that could be covered in the negotiation.

3.4 How Important is Each Tradable?

Negotiators often find it is necessary to carry the details of several negotiations in their mind at any one time – rarely do we find ourselves negotiating something through to a final decision before we move onto another negotiation. It is more likely that we will have several negotiations on the go at any one time. In partial simulation of your covering several negotiations at various stages of completion, I want you to cast your mind back to Jacques Duval at Royale and to what his project team might be up to in their preparation for their negotiation with the manufacturer's representatives on a sustained improvement in uptime.

Having completed the first step of collecting data on recent uptimes of the five chip machines, they need now to formulate proposals that would resolve the problem as they see it and which would help them to achieve rising profitability and improving quality. Our initial ideas about possible solutions need not fully commit ourselves to a final proposal. A lot will happen between preparation and final agreement to alter, adjust or replace the proposals we first think of. But we do need a first cut at the problem.

Our initial ideas for proposals might come from our experience of similar negotiations we have conducted in the past or suggest themselves from deductive analysis. For example, in preparing a purchase negotiation we would probably propose a solution that would reduce the cost of acquisition; if it were a sales negotiation, our proposal would probably aim to increase the price we receive. In both of these cases, however, we might propose something different if our goals were not simply ones of buying cheap or selling dear (as well they might be if quality considerations were important). In a wages negotiation the management would probably propose some commitment to productivity improvements by the employees, while the employees would probably propose some higher remuneration for output levels currently obtained. Whenever we want something, or somebody, to change we generally consider some form of incentive, or its converse, some form of penalty, to achieve the changes we want. Our search for a negotiated solution is a search for the

details of a proposal, broadly along the lines arising from the nature of the problem, which enable us to achieve what we want.

Suppose that the Royale project team concludes that any solution that included the following elements would go a long way towards their achieving their wants:

1. An agreed minimum acceptable uptime of the machines greater than the current average performance.
2. Some form of self-financing incentive scheme for the manufacturer if these minimum uptimes were achieved over a period of longer rather than shorter duration.
3. Some range of stiff penalties on the manufacturer if he fails to reach or sustain the minimum acceptable uptimes.

Each of these tentative proposals is expressed in general terms. To make them operational, and to test them for feasibility, they will have to be much more specific. For instance, the minimum acceptable uptime could be expressed as a range from 80 to 90 per cent and the minimum duration of a given uptime for it to count in any incentive or penalty scheme could be set as a quarterly or six-monthly or annual target. The incentive and penalty schemes would need to have their amounts decided along with the criteria that determine when they are earned, or imposed, as well as in what intervals (annually, quarterly or six-monthly) they are paid. The specific terms relating to each element of the proposed solution are the negotiable tradables.

Identifying the tradables is the next step and in Royale's case these could include the list in Table 3.3. The list is not exhaustive nor exclusive because it only addresses the proposed solution from Royale's point of view and presumes that these tradables would be included in the content of an agreement. The manufacturer might come up with another solution to the problem of uptime that introduces some other tradables not listed by the Royale team and they would require some time in a recess to examine them. It could be that the negotiations show that some aspects of the Royale proposal are not workable, either because there are serious practical difficulties in implementation, or because they prove to be totally unacceptable to the manufacturer. The negotiation method permits the examination of each side's proposals. The negotiators might drop one side's proposals in favour of negotiating over the other's, they might negotiate some form of composited proposal that takes tradables from each list while dropping others, or they might drop both side's proposals in favour of a third (or fourth, or fifth!) set of proposals which neither side had considered when they started.

Table 3.3 Negotiable tradables for the Royale project team

1	Minimum acceptable uptime
2	Minimum duration for acceptable uptime
3	The incentive for achieving an acceptable uptime for a minimum duration
4	Amount of incentive
5	Rate of incentive
6	When paid

7	The penalties for not achieving uptime for a minimum duration
8	Amount of penalty (cash or credit note?)
9	Rate of penalty
10	When levied
11	Coverage (average across all machines or by individual machine?)

The list of tradables in Table 3.3, which was written down as the individual items occurred to the team, describes the agenda as Royale sees it, but as neither side can unilaterally impose an agenda on the other, the negotiations could cover other tradables not yet listed.

The next question for the Royale team is to decide on their priorities in respect of each tradable. This means they must decide on the relative importance of each tradable by its contribution to increasing uptime. Not everything contributes to the overall objective to the same extent, nor is everything wanted with the same degree of urgency – if it were we would have some difficulty negotiating a solution. We negotiate because we value things differently according to how they contribute to our wants (replacing a monotonous diet of potatoes with some delicious cabbage, for example). Asking about the relative value, or priority, we place on the tradables we can negotiate about is a first step to assessing what sort of agreement we value.

The Royale team must assign a notional priority to each of the tradables. It can do this by discussing 'Why is this tradable important to the achievement of our interests?', or 'How important is this tradable to the achievement of our interests?'. In team negotiation some sort of consensus in the team is essential though it must never be assumed in your preparation. Different people have different perceptions about the importance of specific elements in an agreement. For example, accountants tend to prefer solutions that do not involve large amounts of work in progress because of the cost of the money they tie up; production personnel tend to prefer long runs of identical output with as few variations as possible because this optimises the learning effect on productivity and minimises downtime for resetting machines and moving personnel between jobs; sales tend to prefer large stocks of every conceivable variation in the product range because this facilitates their ability to sell output to customers who have 'awkward' needs. Outside these functionally based differences there are normal differences of opinion between people who bring to any decision process all sorts of perceptions, histories and views of the world and who are likely to clash over interpretations about the problem and expectations about the future. Team-based preparation will soon show that the negotiations actually begin within the team before they meet the people with whom they are preparing to negotiate.

The three categories of importance used in the Negotek® Preparation Planner are:

- HIGH
- MEDIUM
- LOW

It should be stressed that these are organising, and not scientific, categories. You could just as easily run with a system marked A, B, C or 1, 2, 3 or Crucial, Important, Desirable, etc. The important consideration is of the relative value to you of the tradables and not a fruitless discourse on the meaning of high versus low.

Broadly, those tradables considered to be of high importance to your assessment of the proposed agreement would be those that need to be obtained if there is to be an agreement at all, because, in their absence, the agreement would not serve – indeed, it might run counter to – your interests. In short, the highs could become, ultimately, the 'walk-away' issues that make agreement impossible. For this reason you must be careful about what you designate as of high importance and therefore of high priority.

Too casual a designation of a tradable as of high priority leads to your overvaluing certain issues, which increases the risk to an otherwise acceptable agreement. Your false sense of priority gets in the way of movement. Inexperienced negotiators tend to make almost everything of high importance and hardly anything is regarded as of lesser importance to them. This is reflected in their negotiating behaviour – they come across as too aggressive for example – and in the difficulty with which they reach agreement. The fewer tradables you genuinely regard as of high priority the better.

The medium category is for those tradables with which you expect to achieve your positions but which would not cause you to walk away from an agreement if circumstances forced you to settle closer to your exit points. How well you do in negotiating the tradables you prioritise as of medium importance is a personal measure of your negotiating skills. Effective and well-prepared negotiators would want to have more tradables prioritised as of medium rather than of high importance.

Low is for all those tradables that are available in the negotiation but which, while you prefer to reach your positions in each one of them, you are willing to trade them close to – or even beyond – your exit points, if by doing so they enable you to achieve your positions with the tradables you have designated as medium or high. However, they are not 'give-aways' in the sense that you are willing to concede them unilaterally to the other negotiator merely because you place a relatively low value upon them (in negotiation, nothing is given away – it is always traded).

While we are presently considering what is the relative importance to you of the tradables, it is worth noting here that there are two parties in a negotiation and each of them has different value systems. What is high to you need not be high to them and, more significantly, what is merely low to you may have a much greater value to them. If it is of greater value to them than it is to you, it is hardly something you should 'give away', for that would only undermine your negotiating strengths. If you give away lows you throw the whole burden of trading onto your medium and high tradables and in consequence you may have to go further towards your exit positions on these relatively important tradables than you would otherwise have needed.

Table 3.4 Negotiable tradables for the Royale project team

	Tradables	Priority
1	Minimum acceptable uptime	High
2	Minimum duration for acceptable uptime	Medium
3	The incentive for achieving an acceptable uptime for a minimum duration	Low
	(a) Amount of incentive	Low
	(b) Rate of incentive	Low
	(c) When paid	Low
4	The penalties for not achieving uptime for a minimum duration	High
	(a) Amount of penalty (cash or credit note?)	Medium
	(b) Rate of penalty	Medium
	(c) When levied	Medium
5	Coverage (average across all machines or by individual machine?)	Low

The Royale team would examine the tradables in Table 3.3 and would allocate to each one of them an agreed priority as, perhaps, set out in Table 3.4. Note that the list has been reduced from eleven to five as some tradables on re-examination have been grouped as subheadings of others. This is to be expected as the initial list of tradables is composed by noting them down as they emerge from the discussion, whatever turns up in whatever order. We have no wish to restrict or artificially inhibit suggestions from team members of what is to be regarded as tradable. After consideration some pruning or reorganisation is perfectly acceptable. The numbering used in this list is, however, set for the duration of the preparation session.

The allocation of priorities is purely notional on my part but some discussion of my choices might elucidate the basic approach I have taken in this case. Consider the two high allocations:

1 Minimum acceptable uptime
4 The penalties for not achieving uptime for a minimum duration

Why do I consider these to be high? Because if profitability is a function of uptime, any solution that does not raise uptime to a minimum acceptable level would fail to address Royale's main interest. It follows that the minimum position that Royale can adopt is that any failure to raise uptime must carry with it a financial penalty that both deters the manufacturer from neglecting uptime below this acceptable level *and* compensates Royale in some measure for the manufacturer's failure. Royale would be in favour of higher minimum acceptable levels of uptime and stiffer penalties than the manufacturer, but within whatever limits Royale sets in preparation it would work tenaciously to see that both these issues were present in the final agreement.

In the case of the medium priorities there are two main ones in my view. First, the minimum duration for acceptable uptime: this is medium but not high, because the principle that there is a minimum acceptable uptime level is more important than the minimum duration of the acceptable level which is to count for purposes

of earning an incentive or attracting a penalty. Royale's negotiators would have some greater leeway over the minimum duration they could accept than they would on whether there was a minimum level of uptime or not.

By similar reasoning the details of the penalties that the manufacturer might attract – the amount of penalty, the rate of penalty and when they are levied – are less important than his acceptance that there will be penalties of some kind for failing to maintain acceptable levels of uptime. If, however, the manufacturer refuses all notions of penalties whatsoever, there seems to be little point in making their details high, but if he agrees to the principle of penalties the details should be regarded as medium – i.e. within the expected achievable aims of the Royale team – and not regarded as being merely low and therefore of little significance to Royale's wants.

The low priorities include proposals for an incentive scheme. Royale would be pleased to achieve its minimum uptime levels without paying incentives; the manufacturer is likely to want an incentive to do so. It is neither of high nor medium importance to Royale that an incentive scheme is in place, but if such a scheme is the only way it can achieve its aims then Royale would be willing to consider the scheme; hence it is a tradable of low importance, as is the amount of the incentive, its rate, when it is paid and whether it is calculated on the average performance of all machines or of individual machines. This gives Royale some scope in proposing an incentive scheme and offering to trade it for agreement on Royale's high and medium tradables.

Using the numbering of the tradables in Table 3.4 they can be set out on any piece of paper (A4 pad, flip chart, OHP slide, etc.) as in Table 3.5.

Table 3.5 Royale's tradables prioritised

Priority	Entry	Exit
High		
1		
4		
Medium		
2		
4(a)		
4(b)		
4(c)		
Low		
3		
3(a)		
3(b)		
3(c)		
5		

At this stage the Royale team have a choice. They can go on to set out the ranges of the entry and exit points that they consider appropriate positions for this negotiation, or they can postpone that detailed decision until they have had a preliminary look at what they estimate to be the priority rankings of the manufacturer. The choice is more one of convenience in particular preparation sessions – sometimes it is down to which members of the team are present – than any fixed advantage from either approach. For continuity here we shall estimate the manufacturer's rankings before considering our entry and exit points for each tradable.

In practice we would know something about the likely stances of the other negotiator on some of these issues from our past experience of them or from similar negotiations with others. But clearly we are always likely to know more about ourselves and less about the other negotiators and this will be reflected in the degree of certainty with which we allocate the other negotiator's ranking of priorities to the tradables we have selected for negotiation. At this stage too, we have little idea what different tradables, if any, they might raise for negotiation.

For presentational simplicity, in this case we shall assume that each team has selected similar tradables for negotiation and from that estimate the manufacturer's ranking of those listed in Table 3.3. How might we allocate priorities to them from the manufacturer's point of view?

Assuming that the chip machines at present are on some form of maintenance contract for which the manufacturer receives a revenue, it would seem sensible to suppose that the continuation of the revenue from that contract is one of his main interests. Of course, to continue the revenue he will have to meet Royale's proposal to reach some minimum uptime levels. His objective would be to negotiate with Royale some agreed but **low** minimum level of uptime – the lower the agreed level, the easier it is for him to avoid penalties and to earn incentives. The manufacturer's priorities would therefore be allocated as in Table 3.6.

Table 3.6 Negotiable tradables for the chip manufacturer's team

	Tradables	Priority
1	Minimum acceptable uptime	High
2	Minimum duration for acceptable uptime	Medium
3	An incentive for achieving an acceptable uptime for a minimum duration	High
	(a) Amount of incentive	Medium
	(b) Rate of incentive	Medium
	(c) When paid	Low
4	The penalties for not achieving uptime for a minimum duration	Low
	(a) Amount of penalty (cash or credit note?)	Low
	(b) Rate of penalty	Low
	(c) When levied	Low
5	Coverage (average across all machines or by individual machine?)	High

The conclusions can be set out in the preparation planner as in Table 3.7. Briefly, the high priorities for the manufacturer are to agree a (low) minimum acceptable uptime in case Royale sets too high a target, and for meeting this target the manufacturer requires an incentive for achieving the acceptable uptime over the shortest minimum duration. It is also of high importance that the manufacturer establishes whether coverage is to be calculated across all machines or by individual machine according to whichever provides him with the best chance of earning an incentive (he will need, of course, data to make the choice).

We now have two tables, Table 3.5 and Table 3.7, and these can be brought together (figuratively) as in Table 3.8. This is the first cut at assessing the relative priorities each side is likely to place on the tradables so far identified.

Table 3.7 Manufacturer's tradables prioritised

Exit	Entry	Priority
		High
		1
		3
		5
		Medium
		2
		3(a)
		3(b)
		3(c)
		Low
		4
		4(a)
		4(b)
		4(c)

Table 3.8 Royale's and the manufacturer's tradables prioritised

	Royale		Manufacturer	
Priority	Entry	Exit	Entry	Priority
High				High
1				1
4				3
				5
Medium				Medium
2				2
4(a)				
4(b)				3(a)
4(c)				3(b)

	Royale		Manufacturer	
Priority	**Entry**	**Exit**	**Entry**	**Priority**
				3(c)
Low				Low
3				4
3(a)				4(a)
3(b)				4(b)
3(c)				4(c)
5				

Exercise 3F

Can you spot potential trades between Royale and the manufacturer?

Surely, each side could consider trading what is of low value to itself for what is of high value to the other negotiator? That, after all is what negotiation is about. Think back to Farmer Jones and his disaffection with a potato-only diet. In a potential exchange of his surplus potatoes for somebody else's surplus of cabbage the HML layout would show:

Farmer Jones	**Farmer Morgan**
High	High
Acquire cabbages	Acquire potatoes
Medium	Medium
Sell potatoes	Sell cabbages

Is it not obvious that Farmer Jones would be willing to trade potatoes for cabbages and that Farmer Morgan would be willing to trade cabbages for potatoes? What they must decide is the rate of exchange (their positions on the issue).

In Royale's case the planner has identified a potential trade across the different valuations each has put on the common set of tradables. Royale regards a penalty scheme as high, its details as medium, while the manufacturer regards penalties as only low (in the sense that he prefers *not* to have a penalty scheme, but would not go to the wall to resist one if it got him an incentive scheme with easy-to-reach targets). The manufacturer regards an incentive scheme as high and its details as medium, in contrast to Royale who regards it as only low (in the sense that for Royale they prefer a solution that does *not* include an incentive scheme, but they would not go to the wall resisting one if it got them a definite improvement in profitability from higher uptime).

Interestingly, Royale and the manufacturer appear to have similar valuations of two of the tradables. Each values a minimum acceptable uptime (1) as high and the minimum duration of acceptable uptime (2) as medium. Does this mean an automatic deadlock? Not at all. It indicates that much of the negotiation is going to concentrate on the details of their respective positions on these tradables: what

minimum measure of uptime and for what duration is uptime to be measured? Noting this, the Royale team is forewarned to prepare their stance on these issues with great care. If they are not ready with sensible reasons for their positions on these tradables, and do not have robust proposals to deal with them, they risk creating avoidable difficulties for themselves.

Comparing the valuations of each side could show a situation similar to Figure 3.1. The sloping lines show that what is high to us is only medium to them; what is medium to us is low to them, and what is high to them is only low to us.

In Figure 3.2 a different configuration of the valuations is shown. Here what is high to us is also high to them; what is medium to us is also medium to them; and what is low to us is also low to them.

In Figure 3.3 another possible comparison of valuations is shown. This is more complex than the other two because it shows some valuations that are identically valued and others which are differently valued: our high is high to them, our medium is low to them, and our low is medium to them.

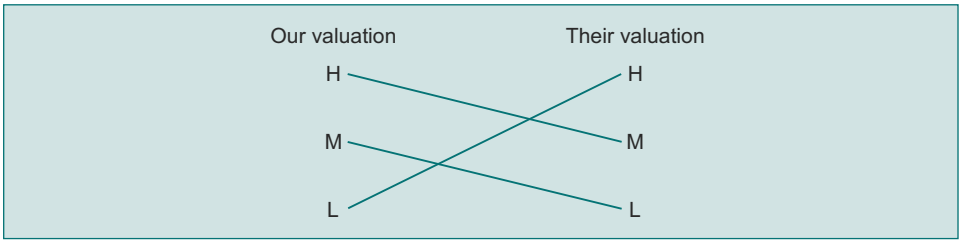


Figure 3.1 **Comparative valuations 1**

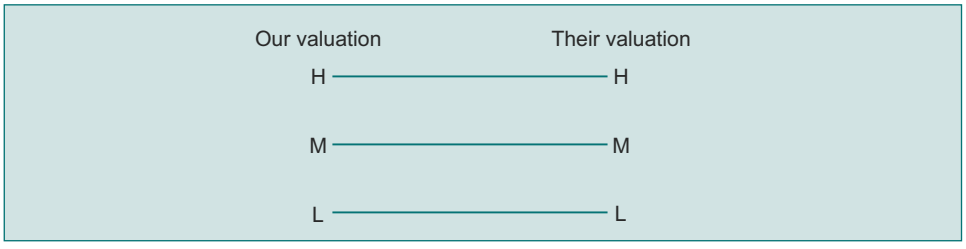


Figure 3.2 **Comparative valuations 2**

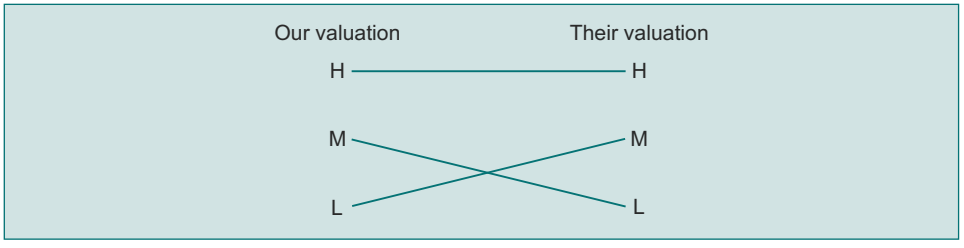


Figure 3.3 **Comparative valuations 3**

Exercise 3G

What are possible negotiated solutions to the situations in Figures 3.1 to 3.3? Make a note of your own suggestions before looking at my answers in Appendix 2 at the back of the book.

3.5 What are the Negotiable Ranges for Each Tradable?

Negotiators prefer to give themselves a range of positions in which to settle rather than attempt to secure a fixed position. The latter almost always requires the other side to give in and this alone is difficult to carry through in the context of a negotiation. If they must give in to our position, why are we bothering to negotiate? Moreover, if it is a negotiation why do we expect them to give in to our fixed position? For reasons elaborated in Module 2, negotiators are more likely to decide upon entry and exit points for each of the tradables and it is to this preparation task that we now turn.

As with the allocation of each tradable to a specific priority, nothing decided in preparation about each tradable's entry or exit position can be set in concrete. We can never be certain that our pre-prepared positions have any substance in reality until we meet the other negotiators and listen to what they have to say and propose. But this does not excuse us from preparation. The contact phase of negotiation is not scripted. We do not know for certain what will unfold once we meet with them. If we have to open first, we ought to be ready with something realistic and credible to say about each of the negotiable tradables that the sides share.

The Royale team should set the entry and exit point for each of the tradables in Table 3.8. Perhaps (for illustration) this could produce the details set out in Table 3.9.

Table 3.9 **Royale's and the manufacturer's tradables prioritised with entry and exit points assessed**

Priority	Entry	Exit	(Exit?)	Entry	
High				*High*	
1	89%	70	?	70	1
4	High	Low	?	High	3
				Individual	5
Medium				*Medium*	
2	Annual	Quarterly	?	Monthly	2
4(a)	£10 000	£2 000	?	High	3
4(b)	1 Point	5 Points	?	£10 000	3(a)
4(c)	Monthly	Quarterly	?	1 Point	3(b)
			?	Monthly	3(c)

Priority	Entry	Exit	(Exit?)	Entry	
Low				*Low*	
3	Low	Self-financing	?	Low	4
3(a)	£2 000	£4 000	?	£1 000	4(a)
3(b)	5 Points	1 Point	?	5 Points	4(b)
3(c)	6 Monthly	Quarterly	?	6 Monthly	4(c)
5	All	Individual			

Clearly, Royale cannot be sure of what the manufacturer's negotiators will propose and its assessments are bound to be unreliable. In practice, it would be expected that some, if not all, of the manufacturer's entry points would be left blank – providing an agenda for information-seeking in the early stages of the negotiation – and those that were assessed with some confidence would still be open to confirmation. For these reasons, it is highly unlikely that the Royale negotiators would know anything at all about the manufacturer's exit points and these must be left with a question mark.

The arguments for particular entry and exit points would depend greatly on the circumstances of the case. Those shown in Table 3.9 are my own interpolations from the details I know of the real-world negotiation upon which the case is based. A brief explanation of my choices might help.

Royale would probably open with a proposal that sought for them an almost perfect uptime performance. The chip machines have a maximum possible availability of 90 per cent (the other 10 per cent is lost in preventative maintenance) and their entry point of 89 per cent is a ranging shot to demonstrate their earnestness about improving uptimes. On the other hand the manufacturer would probably accept that 70 per cent represented a reasonable minimum performance, given the data, and he would be likely to open here, indicating a willingness to move upwards if conditions were right. Royale would press for high penalties for failing to meet uptime targets and they could safely assume that the manufacturer would prefer low, if any, penalties. The manufacturer might prefer a scheme based on the performance of individual machines, rather than an average performance across all machines, on the grounds that some high performing machines could earn him high incentive payments, while the lower performers would not hold these potential earnings back (assuming they scraped above the penalty level). Royale is unlikely to be concerned too much about which way the calculation went (it is only a low) but would be likely to open with an all machine proposal, ready, if conditions were right, to accept an individual machine system.

The minimum duration of a performance level presents Royale with a difficult choice. Initially, the team might go for an annual measure – all machines have to achieve high uptime ratios for a year before incentives are earned – but this is vulnerable on two counts. First, on grounds of equity, the manufacturer might argue for an annual measure before penalties are imposed, and secondly, remembering Royale's main aim – to achieve higher uptime – an annual measure could work

contrary to its interests. For instance, the manufacturer for much of the year could be performing below an acceptable level and is therefore protected from penalties until the year end. Worse, at some point during the year it will be impossible for performance to be improved sufficiently to raise the annual average and, deprived of the possibility of earning incentives, the manufacturer has no incentive to make the effort! This misreading of your interests is not uncommon in preparation. It comes from forgetting that you are negotiating to achieve your interests and not to devise schemes that 'punish' the other side by making it difficult for them to work towards your ends. In this case, a review of this entry point when negotiations are under way – and the other side often can be relied upon to point out defects in Royale's proposals – would be advised.

The details of the two schemes for incentives and penalties broadly follow the principle that Royale prefers higher to lower penalties and the manufacturer prefers higher to lower incentives. Royale has some room to manoeuvre here because it can afford any incentive scheme that is self-financing – the gains in profitability from higher uptime greatly exceed the cost of the incentives. The manufacturer has some room for manoeuvre on penalties if the reliability of the machines can be assured to exceed the level at which penalties, even draconian ones, come into effect.

From the assumed data in Table 3.9, it is clear that there is some overlap on the details of the two schemes. The face-to-face negotiations will confirm or challenge the prepared entry and exit points of each party. But the preparatory exercise has not wasted the negotiator's time. For one thing, it has clarified the issues, sorted out the positions and provisionally related them to the basic aims of Royale. Second, it has given the Royale team command of the detail of what issues must be addressed and what is at stake. Few alternative systems provide such an economical way of surveying the detailed content of proposals. Negotiators who have command of the detail usually gain a psychological edge in terms of confidence over those who are poorly prepared. Last, it has highlighted the possibilities for a negotiated solution based on trading both across different valuations ('We will accept some form of penalty scheme if you agree to some form of incentive scheme') and trading within the available ranges of each tradable ('Taking averages over a year is too long; we would be prepared to consider averages over each quarter').

Epilogue

Negotiators who concentrate on developing a traded solution are going to waste less time in posturing than those who switch in and out of intimidation and surrender in an attempt to get what they want. Preparation enables the negotiator to formulate a solution based on his real wants, rather than prejudices or emotional reaction to the other party. To discover real wants we must begin with the data and analyse what will meet our best interests, given that our best interests are often constrained by the need to secure the consent of the other negotiators (just as their wish to meet their best interests is constrained by their need to secure our consent).

Neither Farmer Jones nor Farmer Morgan need be at war with each other to vary their diets: if they see each other as mortal enemies then they will have to endure a monotonous diet of potatoes or cabbage and forego the opportunity to have a

much more pleasurable and varied diet of both. Preparation, rather than reaction, forces the negotiator to consider solutions that are best for each party. It turns attention from the limited benefits of competing with the person you are negotiating with, to the far more fruitful benefits of engaging them in co-operation. Such thoughts do not mean that you must give up all of your interests or that you should deny yourself your positions. Far from it. Preparation helps decide whether a negotiated solution is possible, and, if it is not, you will have to secure your interests by some means other than negotiation, or through negotiation with some other person, or revise your interests and your positions on the issues.

If the data show that the other negotiator has no influence upon, nor responsibility for, the situation we wish to change, it is hopeless conceiving of a negotiation with them. Mustafa cannot negotiate with Bertrand to acquire a Pomme Marcel IIx if Bertrand does not sell that brand of computer; Duval cannot expect the chip machines' manufacturer to negotiate an uptime agreement if he has been using third-party maintenance personnel to maintain his machines in contravention of the warranty terms agreed when they were purchased. It is also hopeless to attempt to negotiate without any preliminary collection and study of the data – perhaps the problem is not what is happening but what we think is happening.

Suppose we have perceived that there is a problem and that we have collected and analysed the data and that we have some idea of what we want to happen. Our thoughts must turn to two areas: what is negotiable in the situation (identify the tradables) and what we want most to happen if we are to secure our objectives (prioritise what we value into high, medium and low).

We can choose now to take a look at what we think might be the priorities of the other negotiator. How does he value the tradables? What is he likely to be looking for? This preliminary assessment might throw out some interesting possibilities. For it is in the differing valuations that we find the possibility of negotiating a solution.

Review Questions

Note down which of the following responses you think are correct before checking with the discussion of the answers to review questions in Appendix 2.

3.1 In a dispute with a supplier over his failure to perform his contract, the buyer should:

i. Check the contract carefully for evidence.
ii. Assess who is to blame.
iii. Collect data on the failure to perform.
iv. Arrange for a quotation from another supplier.

3.2 Negotiators have interests because:

i. Some issues are more interesting than others.
ii. They are motivated to prefer some outcomes to others.
iii. They prefer some issues to others.
iv. Their positions are negotiated but their interests are not.

3.3 An issue is:

i. A topic for discussion.
ii. A collection of positions.
iii. An item on a negotiator's agenda.
iv. A decision for negotiation.

3.4 A position is:

i. An obstacle to agreement.
ii. A sub-issue.
iii. A point in a negotiation range.
iv. A negotiable tradable.

3.5 Negotiators prioritise:

i. Interests.
ii. Entry and exit points.
iii. Issues.
iv. Positions.

3.6 Which of the following is correct?

i. Negotiators cannot move from positions with high priorities.
ii. Negotiators can only trade on issues with medium and low priorities.
iii. Negotiators can use low priorities as 'give-aways'.
iv. Negotiators can move from any position on any issue if it suits their interests.

Module 4

Debate in Negotiation

Contents

Prologue

4.1 Introduction

In retailing, 'stock-outs' are one of the most irritating problems that store managers face. Customers are willing to purchase an item but the store has none left in stock. The customer is disappointed and rather than wait for the store to resupply with the item, he goes to a rival store, perhaps to buy other items as well (with a risk that his custom is lost forever). The store loses turnover and profit, perhaps permanently. Given the amount of effort and marketing expense retailers undertake to get customers into their stores, when they lose sales from a stock-out, particularly when its cause lies outside their control, it is a burden the store manager could well do without.

One such stock-out occurred when Spanner Brothers was unable to maintain supplies of 'Console', its branded liquid softener, because its own supplier of plastic bottles was on strike. Without bottles, Spanner could not pack their liquid, which in turn left the stores it supplied with low or even no stocks of Console, a heavily promoted popular product, very much in demand. The strike lasted 24 weeks, and while alternative manufacturers of plastic bottles boosted their own production to Spanner Brothers, they could not supply enough to make up the shortfall from its main strike-bound source.

Console is sold to stores in cases of 16 × 1 litre bottles. One of its customers, Fraternity Plc, bought 170 000 cases of Console a year (averaging 3200 cases a week) and sold them throughout its chain of suburban stores. Until the strike, sales of Console had been growing at 3 per cent per year. During the strike sales at Fraternity stores slumped to 74 500 cases or 2069 cases a week. Fraternity Plc calculated that the lost sales during the strike were worth £54 884. In an effort to recover some or all of these losses, and to demonstrate that stock-outs caused by supplier failures were no longer acceptable in the highly competitive retail market, Ron Smith, Purchasing Controller at Fraternity, wrote to Spanner Brothers with a claim for compensation.

Ron's letter landed on Eric Harvey's desk. As Legal Manager at Spanner Brothers he dealt with all legal problems. He had heard industry gossip about potential stock-out claims but until the letter from Fraternity he had not handled a real claim (nor had anybody else at Spanner Brothers). He rang Ron to discuss the letter and to make it clear that any claim would be vigorously contested. His immediate judgements were that Fraternity were 'trying it on', that the store managers were blaming their suppliers for their own inability to improve their margins, and that it did not qualify as a genuine case for compensation. From Eric's point of view the failure in supply was in no way the responsibility of Spanner Brothers. If anybody was to blame it was the strikers at Bottles & Containers, and the management who had lost control of their employees.

Exercise 4A

From what has been revealed to you about the situation, what do you think Eric could say that would worsen the chances of a settlement during his phone call to Ron? Make a list of the sort of mistakes he could make before reading on.

Your list could include some of the following possibilities: Eric could **argue** instead of listen. He could **assume** that lack of precedent precluded creating one. He could **blame** everybody else besides Spanner Brothers, including Fraternity. He could **justify** Spanner Brothers' record. He could introduce **irrelevances**. He could make **assertions** about Fraternity. He could **abuse** Ron. He could **mock** or be **sarcastic**. He could **score cheap points**. He could **irritate** Ron. He could make **personal attacks** and **tactless criticism**. He could make wild and unsubstantiated **allegations**. He could **threaten** or otherwise **challenge** Fraternity. This last would probably terminate the phone call.

Let me reveal what actually happened when Ron Smith received Eric Harvey's call (I only heard Ron's version, so make allowances for his own bias):

> The call was a disgrace. Eric had no intention of listening to our case at all. All he did was rubbish our claim ("dreamed up by some under-employed whiz kid in your legal department"); denied all responsibility ("our record in service is impeccable"); told me I was daft to think that a firm the size of Spanner Brothers would entertain any claims whatsoever from minor customers ("who were

sometimes more trouble than they were worth") for things that were not of its making; asked if I knew about *force majeure* ("I can fax over a leaflet explaining in single syllables what it is all about"); referred me to the unions at Plastic Bottles & Containers ("bloody-minded sods at the best of times"); said he was not going to cover up for our failings as store managers ("most stock-outs are due to your own inefficiencies"); claimed we wanted to fiddle our results at his expense to mislead our shareholders ("you have the worst sales per square foot among the top eight chains"); stated that there was no precedent in the industry for compensation and Spanner Brothers were not going to start one ("we didn't get where we are today by giving in to every whim and whimper of incompetent retailers"); and flatly refused to consider the issue any further ("we'll see who has the deepest pockets for a legal contest all the way to the House of Lords").

Exercise 4B

What could Ron do to make the situation above worse?

The short answer is that Ron could reply in kind to all of Eric's misbehaviours. However, Ron vigorously denied that he behaved other than impeccably in the face of the verbal assault from Eric. He claimed he was a paragon of virtue. If true, Ron was displaying a strength of character not commonly found when people receive Eric's reported treatment. Most people would find it hard to resist responding in similar vein to what Eric said, particularly when they felt strongly about the issues.

Let us assume that Ron did rise to Eric's bait. What might he have said in reply? I have interpolated likely remarks from Ron as might have been reported by Eric if we had interviewed him after the call:

The call was a waste of time. Ron did not listen to a word I said. All he did was rubbish our genuine concerns ("put up to them by some smart-ass whiz kid in your legal department"); denied all responsibility ("our record in this affair is beyond reproach"); told me I was daft to think that Spanner Brothers would get away with ruining his stores' profitability ("your products are sometimes more trouble than they are worth"); asked if I knew about consequential losses and liquidated damages ("I can fax over a leaflet explaining in single syllables what they are all about"); likened Spanner Brothers to the unions at Plastic Bottles & Containers ("money-grabbing vultures at the best of times"); said he was not going to cover up for our failings as suppliers ("your inefficiencies cause more stock-outs than all our other suppliers put together"); claimed we were determined to make Fraternity pay for our failings ("it is well known that you have the worst profitability in the detergent industry and are desperate to avoid a takeover by people who know how to manage your assets better"); stated that it was no longer acceptable for retailers to put up with stock-outs without compensation and Spanner Brothers were going to be the first, but by no means the last, who would pay up for letting their customers down ("we didn't get where we are today by suffering gladly the avoidable burdens of incompetent suppliers"); and flatly refused to compromise on the issue any further ("pay up or we'll see what the courts have to say, right up to the House of Lords if necessary").

Little imagination is required to predict the likely results of this exchange, nor the likely perceptions of who was the victim of the other's uncompromising behaviour. Ask either Eric or Ron which of them is being unreasonable and you would get the same answer: the other one!

This module is about the all important activity of **debate** in negotiation and what we can do to improve our chances of a settlement and, if we are not careful, what we can do to worsen our chances.

Dialogue

4.2 What is Debate?

Negotiation requires communication. If the parties do not communicate in some way it is difficult to see how they could negotiate. Communication need not be oral – it could be written; it could be via third or fourth parties; it could be by gesture or bodily posture.

In some circumstances communication can be implied by the actions rather than the words of the parties. For example, the act of firing a shell ostensibly at the enemy but at the same time each day could be an attempt to communicate that the shell is not fired in earnest but purely for form. The soldiers receiving the regular and predictable shell fire can take elementary precautions, such as keeping under cover at the same time each day, and thereby avoid casualties. In return, they could recognise the implicit communication and conduct their patrols along the same routes each night, thus warning rival patrols from the 'helpful' shell firers not to stray into areas where they would have to be taken prisoner or, worse, shot at. Both sides by their actions have informally 'negotiated' a mutual non-aggression pact under the noses of the more conventionally belligerent of their safely distant commanders. Such local pacts were in fact 'negotiated' during the static trench warfare of the First World War, without the soldiers involved acting treasonably by direct communication with the enemy.

What we say or do communicates some message to the other party. Whether the message that is received is identical to the one we intended to send is another matter. In discourse there is considerable scope for misunderstanding as well as for outright duplicity. Once your message is sent and is interpreted by the receiver according to whatever perceptions of the world to which they subscribe, the effect is certain, and often no amount of assurance or explanation is successful in shifting their perceptions of your intentions, even when their impressions of you are genuinely contrary to your true nature. Hence, in communication we ought to be careful rather than casual.

Debate is the act of two-way communication. We send and receive messages and confirm or revise our perceptions of the other party. In the unscripted interaction of debate we decide the fate of our negotiation. What form a settlement might take is decided by the activities of proposing and bargaining, but whether there will or will not be a chance to propose or bargain is decided by our behaviour in debate.

Debate shapes the tone of the negotiation. It removes or creates obstacles to agreement. It conditions the expectations of the negotiators. It confirms their prejudices or overthrows them. It opens up possibilities or shuts them down. It reveals or camouflages what the negotiators want. And once the dogs of argument are set loose, it is very difficult to rein them in again. It is much better therefore to understand the role of debate and to develop techniques for avoiding excesses of temperament when faced with an apparent unwillingness to give in to our demands.

Debate takes up the greater part of the face-to-face interaction of negotiators. On the basis of observation of many negotiations I estimate that the activity of proposing takes up about 10 per cent, and bargaining less than 5 per cent, of the time spent in direct contact between negotiators. Debate takes up the rest (over 80 per cent) and covers all aspects of interaction that are not specifically those of proposing and bargaining: whenever we ask or answer a question we are engaged in debate; whenever we make a statement of any kind we are engaged in debate. In fact, debate covers such a huge proportion of the time used up in direct contact between the negotiators, and covers such a wide range of functions, that the contribution of its individual components is often obscured – truly a case of the wood getting in the way of the trees. If we can organise and discipline our debate behaviour we have a very good chance of quite dramatically improving our negotiating effectiveness.

4.3 Rackham on Effective Behaviour

Neil Rackham and John Carlisle and their associates at The Huthwaite Research Group sought new training methods to improve negotiating skills in the early 1970s. They recoiled from 'people [who] stopped behaving in a civilised way and try to cheat and deceive each other without scruple'.

Their solution came from research into what negotiators did in practice. They used behaviour models from the social sciences to analyse what happened. Neil Rackham and John Carlisle also did research on 'effective' and 'average' negotiators. The absence of research into what happens when people negotiate struck them as challenging. One reason for this was lack of opportunity (my own research at Shell-Haven was extremely unusual in this respect) and another reason was the lack of a research methodology.

The proposition was simple: 'find some successful negotiators and watch them during actual negotiation to find out how they do it' (Rackham and Carlisle, *Journal of European Industrial Training*, 1978, p. 161). Rackham and Carlisle selected negotiators for close observation who met three criteria:

1. They were rated as effective by both sides.
2. They had a track record of significant success.
3. They had a low incidence of implementation failures.

They identified a comparator group of negotiators who either failed to meet the success criteria or of whom they knew nothing.

Rackham and Carlisle wanted to avoid what they described as 'the common trap of laboratory studies – looking only at the short-term consequences of a negotiator's behaviour and therefore favouring those using tricks or deceptions'.

Since 1978, evidence from replicating their methodology across many negotiation interactions has confirmed their broad findings that skilled negotiators show marked differences in their use of the specified behaviour categories compared with average negotiators. Though all negotiators draw upon all of the behaviour categories, skilled negotiators use certain types of behaviour more frequently, and in those relative frequencies lies the key to effective negotiation behaviour.

While they uncovered some interesting surprises, Rackham and Carlisle confirmed what others had asserted from unstructured observation and assumption. Their unique contribution was to establish the differences quantitatively for the first time and show that they were statistically significant.

The hypothesis that follows from this research by Rackham and Carlisle is that if you train negotiators to replicate the proven identified skills of successful negotiators, then they can replicate their relative successes. *See* Table 4.1.

Table 4.1 Variances in behaviours between skilled and average negotiators

Behaviour	Comments	Measured differences	
		Average	Skilled
Irritators	gratuitously favourable statements about one's own positions or offers ('generous', 'fair', 'reasonable' etc.)	*Use per hour*	
		10.8	2.3
Counter-proposals	immediately counter-proposing, which is perceived as blocking, being unreceptive and disagreeing	*Frequency per hour*	
		3.1	1.7
Defend/attack spirals	'Can't blame us', 'It's not our fault', 'You screwed up, not us'	*Percentage of comments*	
		6.3	1.9
Argument dilution	Using too many reasons to support a case – weak arguments diluting strong ones	*Average number of reasons given to back their case*	
		3.0	1.8
Behaviour labelling	'Can I ask…?', 'If I may make a suggestion' – permits a formality that keeps debate unemotional	*Percentage of all behaviours preceded by a label*	
		1.2	6.4
Labelling disagreement	'I disagree', 'You're wrong' followed by reasons, in contrast to explaining first then labelling	*Percentage of all behaviours preceded by a disagreement label*	
		1.5	0.4
Testing for understanding and summarising	Checking if previous statement has been understood and compact restatements of previous debate	*Percentage of all behaviours*	

Behaviour	Comments	Measured differences	
		Average	Skilled
		Testing understanding	
		4.1	9.7
		Summarising	
		4.2	7.5
Seeking information	Skilled negotiators seek significantly more information than average negotiators. Information is needed for the debate and for bargaining	*Seeking information as percentage of all behaviours*	
		9.6	21.3
Stating feelings	'I feel some doubts', 'I'm very worried', 'I'm not sure how to react', rather than expressing opinions, remaining silent	*Giving internal information as percentage of all behaviours*	
		7.8	12.1

Source: Extracted from Rackham and Carlisle, 'The Effective Negotiator – part 1: the behaviour of successful negotiators', *Journal of European Industrial Training*, 1978, Vol. 2, No. 6, pp. 162–5).

First, a set of behavioural categories was determined (questioning, blocking, testing for understanding, and so on) and then the relative incidence of specific behaviours was related to how effective the negotiators concerned were judged to be by their peers.

If effective negotiators used an identified set of behaviours, then negotiating training could concentrate on first introducing the trainees to the effective and ineffective categories of behaviour, and then, through role-playing and simulation they could be trained to use the effective behaviours more frequently and to avoid the ineffective behaviours.

The behavioural approach has a minor weakness. Its emphasis is on the behaviour of negotiators, but it neglects the structure and culture of negotiation, such as is found in the 4-Step process common to all negotiations. Seeing negotiation simply as a contest between behavioural styles, such as pure aggressive red versus pure submissive blue, or as all tactics without any sense of the overall game, can become a narrow trap. That would be like playing a game using a few plays out of the many that are available, such as playing forehand in tennis but never backhand, or kicking long balls up the field but never short passes in football. If behaviourists use effective behaviour to suit the circumstances then they have much to say that is valid and useful.

Interestingly, Huthwaite researchers, such as John Carlisle, have moved on from the training of negotiators in pure behaviourism to the more ambitious challenge of shifting negotiating cultures to a post-negotiation phase. His recent book, *Beyond Negotiation* (1989, John Wiley), which aims to persuade purchasing departments that a change to a joint problem-solving co-operative culture would be better suited to

their needs than the conventional confrontational buyer–seller model, brilliantly sums up his shift in personal priorities and echoes analogous shifts in the recent contributions of Fisher and Ury (*see* Module 8) from a prescriptive model of bargaining to reforming the conventional dispute structures that produce confrontational and positional bargaining. Neil Rackham has also moved on from negotiation training but, unlike John Carlise, who moved on to prescriptions about purchasing in a new culture, in Rackham's case it is to sales training within the conventional buyer–seller relationships as they predominate at present. He has used the successful methods developed at Huthwaite to discover how effective sellers behave and thereby how people should be trained to sell (Rackham (1988) *Making Major Sales*, Gower). Much of his recent work has overturned many cherished beliefs of conventional sales training.

4.4 Types of Debate: Destructive Argument

In debate we can be either constructive or destructive. Constructive debate moves us towards a solution or an acceptable decision; destructive debate has the opposite effect of moving us away from these desirable outcomes. Thus, debate is characterised by how it serves our intentions and not just by how it might be assessed by a neutral observer, or how it might conform to some pre-set criteria. We are not critical of destructive debate because of the offence it might provoke, or whether it is good- or bad-mannered to behave in that way (relevant though these factors might be in the normal courtesies of interpersonal interaction), but by whether this or that behaviour contributes to the negotiated outcome we seek.

Thinking back to the debate between Eric and Ron over the claim for compensation for stock-outs during the strike, we can identify several behaviours that commonly would have a destructive impact on the chances of their negotiating a settlement. In so far that Eric might have concluded that he did not want to negotiate with Ron at all, his telephone behaviour is understandable but this would merely force the resolution of the problem of compensation for stock-outs onto some other method of making a decision, such as litigation, or, through Eric's intimidation of Ron, to Ron's giving in on this occasion.

One way of highlighting the destructive range of behaviour is to monitor what happens in the debate using a simple chart as set out in Figure 4.1. The left-hand column, time, is divided by rows representing each minute of negotiation. The columns to the right are labelled for different types of destructive debate, or what I shall call argument, running from threats through to irritation.

Eric and Ron, 14 June. Commenced: 10.09 a.m.

ARGUMENT

Time	*Threat*	*Attack/ blame*	*Point score*	*Interrupt/ block*	*Assert/ assume*	*Irritate*
10.09					●	●
10				● ●		● ●
11		●	●		● ●	
12		● ●			●	
13		●● ●●		●		●
14				●		●
15		● ●				
16		●				
17	●	●● ●				
18	●● ●●					

Figure 4.1 Time-sheet: argument behaviour

The observer of the interaction between the parties would mark with a tick any examples of the behaviours in the columns evidenced by either or both sides for each minute of the interaction. In Figure 4.1 only a few minutes are shown, though in principle the observation could last as long as is necessary. For convenience, the observer uses the left hand of a column for noting behaviours of, say, Eric, and the right hand for Ron. Thus, at a glance the trail of destructive behaviours, should they manifest themselves in the interaction, can be noted. For illustration, Figure 4.1 shows the interaction between Eric and Ron.

The striking thing about the interaction illustrated in Figure 4.1 is the south-westerly drift down the observer's report. Eric opens with **irritating** remarks ('This nonsensical letter you've sent…'; 'You can't expect me to take this seriously…') and rapidly runs through the entire range of destructive things he could say: 'Which unemployed legal whiz kid put you up to this?' (**assert**); 'Don't give me that rubbish about your lost sales'(**interrupt**); 'Look, Ron, your warehouse people half the time wouldn't know a box of Console from their lunch box'(**attack**); 'You should have managed your stocks better'(**blame**). Within eight minutes Eric is resorting to **threats** ('We won't supply you with anything until you drop this absurd claim').

After threats there is usually only one place to go – **deadlock**. The negotiation, such as it was, usually ends here before it begins. Both sides are not only further apart that they were to start with, they are also angry and emotional. Wherever their relationship goes from here it is more often characterised by resentment than by sweetness and light.

4.4.1 Irritation

The problem with destructive argument is that it generates a negative response. Negotiators who are irritated by what you say are put off from exerting themselves positively on your behalf. Your 'fair and generous offer' may be totally inadequate in the view of the other negotiator. To assert that your minimal movement towards them is 'generous' or 'reasonable' serves only to irritate them. While we can all recover from slight irritations of this nature we soon get annoyed if they are continually repeated. If we are annoyed by what somebody says to us, we are seldom inclined to assist them in achieving their goals. Why irritate somebody with whom we want to do business? Is it necessary to make controversial claims for what are minimal moves on our part? If our first offer is 'generous' what does this imply about our last offer? Negotiators, therefore, should avoid irritating each other. It only reduces the chances of our reaching our desired goals.

This has particular relevance to the use of sexist or racist remarks. A young woman surveyor, entering the office of the senior male surveyor who is handling the sale of a property that she has been retained by her client to purchase, is likely to be very irritated if the man asks her: 'When is your boss coming to this meeting?'. Sexist or racist put-downs, and so-called milder put-downs about a person's origins, accent or appearance, can be extremely damaging because they deeply irritate the other negotiator.

4.4.2 Assertions and Assumptions

Assertions and assumptions about somebody else's position or motivation are exceptionally dangerous for negotiators. Not only do they risk being exceedingly irritating for the person listening (to which the remarks in Section 4.4.1 on irritation apply, only more so) but they can lead to a great waste of time while they are corrected, or worse, they can destroy the chances of a settlement, if the assertion itself impedes a fruitful debate and leads to a breakdown in communication.

Eric might genuinely believe that Ron has invented, at Spanner Brothers' expense, a potential source of additional income for the Fraternity store group, but to assert that this was Ron's motivation in asking for compensation for the stock-out would raise more problems than it would solve, even if it were true in fact that Ron's motivation was correctly assessed by Eric. First of all, Ron would be unlikely to admit that he was so motivated – in fact he would almost certainly hotly contest the suggestion, whatever its basis in fact or fiction – and second, whatever Ron's alleged motivation, his case for compensation would best be treated on its own merits if Spanner Brothers and Fraternity are to continue their mutually profitable relationship.

When we make assertions about people's motivations we are normally less than careful in our suspicions. People seldom suspect good intentions in suggestions that threaten their interests. For example, Eric at Spanner Brothers feels threatened by the principle of compensation for stock-outs because Fraternity's claim means that he is being asked to pay for consequences beyond the control of his company. If Fraternity makes their claim stick, then Spanner Brothers will lose revenue over and

above what they lost as a result of the strike at Plastic Bottles & Containers, and the claim would set a precedent for all their customers.

Sometimes our anger at suggestions that make us worse off spreads over into our verbalizing our suspicions as to why the proposers are making their suggestions. Our assumptions are likely to be without foundation for 'what heart knows another? Ah! who knows his own?' (Arnold). Best to keep our assumptions to ourselves and not to make assertions for which our evidence is prejudiced.

4.4.3 Interruption

Exercise 4C

It is appropriate to interrupt somebody who is clearly factually incorrect in their statements. Consider whether this statement is true or false before reading on.

Many negotiators, when asked to choose, claim that this statement is true. They argue that a 'clearly factually incorrect' statement should be corrected as soon as possible, though this is not what the statement says in fact. It states that you should **interrupt** someone when they make (what you believe to be) a clearly factually incorrect statement. The truth or falseness of the statement turns on the act of interruption.

Now I have asked audiences, sometimes of several hundred negotiators at a convention, how many of them like to be interrupted. I have never (yet!) had a single person raise his or her hand in favour of being interrupted. When I ask the same audience how many of them have never interrupted anybody, I still get no takers. Is that so strange? Yes, when you consider that about 30 per cent of the same audience will consider the statement in Exercise 4C to be true. Surely there is an inconsistency here? Only if we forget that we often divide what we like or do not like from what we do or do not do. We do not like being interrupted, but we regularly interrupt each other. Yet what is true for us – we do not like to be interrupted – is also true for others – they do not like being interrupted either.

Perhaps it could be argued that we do not normally interrupt someone for the obvious reason that it is impolite to do so, but when they are 'clearly factually incorrect' that is a different situation. I find this unconvincing. According to my somewhat informal survey, people do not like to be interrupted without qualification of circumstance (I certainly do not qualify my question in any way). And I have deliberately loaded the statement with the assertion that the person we are considering interrupting is 'clearly factually incorrect'. This is to tempt the negotiator into justifying behaviour which on reflection he would avoid. Who says that they are 'clearly factually incorrect'? That could be your honest opinion but your opinion could also have no basis in fact. Anybody who has sat through a court case will know that on the basis of some evidence from some witnesses they could not all have been witnessing the same event. I have heard people describe the road conditions and the relative speed of the vehicles involved in terms that have made me wonder if they had got mixed up in the wrong court cases by accident! In one case, in which I was a witness, a wet road at dusk was described as a 'dry road in

broad daylight'! (I resisted the temptation to interrupt the judge who was, in my view, 'clearly factually incorrect'.)

There are few facts that are not controversial to somebody. In debate there are 'my' facts and 'your' facts. Therefore, beware of interrupting in general and particularly when you hear their version of the facts. If they are erecting a case on the basis of spurious facts, there are other, more effective, ways of assisting them in demolishing their own case. In few circumstances will interruption prove to be one of them. As with irritation, we can survive the occasional interruption, but when it becomes a habit and gets out of control we should be aware as negotiators that we are making it more and more difficult to achieve our objectives by constant interruption of the other negotiator.

4.4.4 Blocking

We shall explore later the most effective ways of responding to a proposal, including those we disagree with, but we ought to note here the entirely futile activity of blocking a suggested solution or a statement on the grounds that we do not wish to go down that route at all. Negotiators are often interrupted, not just because, in our view, they are factually incorrect, but because they are talking about something we instinctively reject or have decided to reject in our preparation. Sometimes we justify blocking on the grounds that, if we did not, then their suggestion would gain credibility by being unchallenged. This is altogether unhelpful. If we know little of the views and thinking of the other negotiator we will know even less if we interrupt them to block off statements that might lead to areas we are sensitive about for one reason or another.

Sometimes our sensitivity is provoked merely because we have not considered what they are suggesting and we react aggressively without thinking through what the suggestion might do for our objectives.

To block negotiators is to waste opportunities to assess what they are thinking about. When negotiators express themselves they reveal their case for their positions, often unintentionally. We need information about, and confirmation of, their approach to the problem under debate. Blocking denies them the opportunity to reveal more about themselves to us and denies us the opportunity of learning from their revelations. By permitting negotiators to elaborate upon a theme they have introduced, we do not necessarily legitimise their suggestions. Listening to a viewpoint is not an endorsement of it, for nothing is agreed unless and until we explicitly state our agreement.

4.4.5 Point Scoring

Scoring cheap points is a temptation most people find hard to resist. There is a delightful scene in the video *The Art of Negotiation* (1983, Rank, Longman), based on a book I co-authored: *Managing Negotiations* (1980), Business Books, in which a Mrs Daphne Chichester (Penelope Keith) is in debate with a garage owner, Mr Spraggett (Tony Caunter), over her recently serviced car breaking down because of a loose coil his engineers had not spotted. Mr Spraggett asserts: 'We lean over backwards to

keep that car on the road for you', to which Mrs Chichester, in top point-scoring mode replies: 'Then I suggest that you try leaning forwards; you might be able to see what is under the bonnet'. This scene always provokes laughter from audiences watching it for the first time, but the impact of the remark on Daphne's debate with Mr Spraggett is catastrophic. A few more angry exchanges and she walks out in a temper.

Point scoring is an all too easy trap to fall into. We do so because we find our quick repartee devilishly funny. We almost cannot help ourselves. We score by wounding the person we are trying to do business with. To put this bluntly, it is clear that point scoring at somebody else's expense is self-defeating but I have seldom noticed negotiators side-stepping an opportunity to wound, or wind up, each other.

4.4.6 Attacking/Blaming

Not surprisingly, point scoring almost inevitably leads to one negotiator attacking or blaming the other. If you attack people they are almost certain to defend themselves; if you blame people they will justify themselves. They will also counter-attack you, provoking you into defence and justification. Within a few sentences a first class row will be under way, each vehemently attacking the other, and widening out the disagreement for good measure. Attack and blame spirals seldom remain contained. Before long the entire relationship between the negotiators and its history is a subject of contention.

As the heat rises, each says things that calmer counsels would foreswear. Eric, for example, broadens his attack from who was to blame for the stock-out to the allegedly low profit per square foot earned in Fraternity stores and asserts that Spanner Brothers is dealing with people 'who are more trouble than they are worth' (a point of view with which the holder is hardly likely to endear himself to Ron). Most attacks are taken personally and personal attacks are doubly tactless. A relationship may never recover from deeply wounding or offensive personal attacks. But even if the damage done by an attack is not permanent, it is almost certainly obstructive of a negotiated settlement in its immediate aftermath, and anything that obstructs progress towards a settlement is a serious impediment to a negotiator.

I have heard it argued by some negotiators that there is some tactical advantage to be gained by indulging in some 'controlled' attack or blame behaviour. When handled carefully, they assert, a few well-placed attacks can 'soften up' the other side and make them more willing to compromise. As with most aspects of human interaction there is no doubt room for experimenting with every form of behaviour across all the circumstances you will experience in a short lifetime. However, I suspect that those who believe in 'softening up' the opposition by attacking them have exaggerated the incidence of the circumstances where judicious attacks have produced the kind of results they claim for them. In effect, I suspect that they are spuriously justifying behaviour which, while they are honest enough to admit to it, they are not objective enough to question. In the main, and for most occasions, I think you will find that attacks are seldom controllable and even less frequently are they beneficial to your interests.

4.4.7 Threats

In the drift of argument towards deadlock, threats constitute the final step. It follows that to open with threats is one of the crassest of negotiating mistakes. It always makes a bad situation worse and a worse situation hopeless. Consider the case where a developer wanted to extinguish a private right of way across some land upon which he wanted to erect some high technology offices. The owner of the right of way, a local farmer, was not inclined to sell at any price that had so far been mentioned in previous meetings. At the meeting I attended I was astonished (the farmer was furious) to hear the agents for the developer open with a series of threats as to what they intended to do unless the issue was settled quickly and in their favour. The threats ranged from the credible – applying for Compulsory Purchase Orders, not just for the right of way across their land but for the farmer's house and land adjacent to it, to the incredible – having his business investigated for tax frauds and his feeding systems for BSE and hygiene failings. Predictably, not much progress was made that morning!

There are all kinds of reasons given for making threats. Few of them apply to negotiating, for the case against making them in a negotiation rests on a single premise: they seldom if ever have the desired effect (namely to get somebody to comply with our wishes) and almost always have the opposite effect (they provoke them to dig in). Among the reasons advanced for making threats, the most common is an attempt to make the other side aware of the consequences of its failure to agree with what we are proposing. It is also the least successful thing we can do when faced with opposition to a proposal.

Threats produce their own counter, either in the form of a direct counter-threat or in the form of some sort of demonstration that we are undeterred by the threat and can joyfully live with the consequences. For example, you threaten litigation and I counter-threat with a counter-suit; you threaten to cut off my water supplies and I respond with a declaration that doing without water would be one of the great aesthetic experiences of my life. However serious or otherwise the threat and its counters are, we are no longer negotiating a solution. We are rapidly speeding towards some other means of arriving at a decision. Meanwhile, in the development case mentioned above, the right of way stayed in the developer's way to this day and the only people to gain from this sort of stand-off are those who do well out of litigation.

Threats made in anger are doubly destructive. Frustration produces more threats than anything else and often arises because we are stuck in destructive argument. Attacks lead onto threats as water runs downhill. Once committed to a threat we feel the need to go through with it even when its costs exceed its benefits. A union making little headway with a management might threaten a strike and then be under pressure to mount one in order to show management that it cannot be taken lightly. The strike costs the employees their wages and the management its output. This weakens the enterprise financially and reduces its ability to fund pay rises.

4.5 Types of Debate: Constructive Debate

A valid question at this juncture would be: 'Assuming we were inclined to behave impeccably, how do we deal with somebody else who is behaving destructively?'. The alternative to destructive argument is **constructive** debate. This is characterised by behaviour that serves our goal of seeking a solution agreeable to our interests. If it moves the negotiation towards an acceptable solution then we are prepared to engage in constructive debate irrespective of the provocation to do otherwise. Indeed, there is no alternative to a constructive approach **whatever the behaviour of the other negotiator**. To retaliate in kind to destructive argument is a certain recipe for deadlock and, *in extremis*, for a breakdown in the relationship. This is not to say that a constructive approach will necessarily produce the result you want but it does have the best chance of doing so, whereas an argument has little or none.

What are the elements of a constructive debate? They are remarkably few in number and for this reason alone they are easy to recognise and practise. They can be illustrated by extending the time-sheet for the incidence of destructive argument in Figure 4.1 to the incidence of constructive debate in Figure 4.2.

DEBATE				
Time	Neutral statement	Assurance	Question	Summarise

Figure 4.2 Time-sheet: debate behaviour

As before, the observer would tick each occurrence of the respective behaviour during each minute of the negotiation, using the left-hand side of a column consistently for one of the negotiators and the right-hand side for the other. This way, a trail of the negotiating interactions is produced, hopefully, as time elapses, showing a drift south-easterly towards agreement (there are some additional columns in the complete sheet, not shown in Figure 4.2, to identify signalling, proposing and bargaining behaviours).

4.5.1 Neutral Statements

The making of neutral statements is the most common activity in debate. These cover any statement by one negotiator that informs the other negotiator as to his views, opinions, attitudes and approach, or is in answer to a question, on whatever is under discussion. The qualification that these statements are neutral distinguishes

them from attacks, assertions and threats from the destructive argument range of behaviours. For example, to tell the other negotiator that you have collected the data on the alleged incident and that your findings suggest that a delay of six weeks occurred, is a neutral statement if your tone is not accusative and your manner is not aggressive. To have used the words 'avoidable delay' might be construed as an attack and not as a neutral statement. If the tone or manner changes, the observer would classify the behaviour according to whether it moved the statement from or towards neutrality.

In the course of a negotiation, it is common for short speeches to be made by each side as to their views on the subject matter of the meeting. In the main these are neutral statements and my experience of observation is that this column attracts the most ticks for much of the time. Communication in negotiation is essential and the making of neutral statements appears to be the most common manifestation of communication – negotiators must inform each other of what they are about and explain why they have adopted the views they hold. Even answering a question requires information and explanation, as does the making of, or the response to, a proposal. The interaction of the parties to what each other says involves sometimes prolonged exchanges of neutral statements. These can also be repetitive.

Negotiators disclose information to each other (though how much they disclose could be of tactical importance). We might volunteer information ('I had a meeting yesterday with the site engineer and he told me that the carpenters are running about three shifts behind in the shuttering work'), or we might give it out in response to a question ('I have no idea just yet as to why they are behind, but I can tell you the effect it is having on the steel workers' bonus').

Information is the lifeblood of a negotiation. If we have not got accurate and timely information, we cannot make sensible proposals. We make assumptions but must test them with information. Our pre-meeting assumption might be that they are interested only in saving time not money; when we meet with them we must validate this assumption by listening to their statements, perhaps by asking questions, before we suggest a solution. If our assumption is wrong and untested we might propose a solution that saves time, when in fact they want to hear a solution that saves money.

For example, Gerry, the owner of a double glazing plant wanted to improve the efficiency of the glass cutting and framing operations. He decided to computerise the system so that orders for similar sizes could be batched throughout the day to save setting and re-setting downtimes. In conversation with him about this I asked from whom he was going to buy his computers. 'IBM', he replied. 'Why IBM?' I asked. 'That's easy. I was looking out of my window one morning,' he said (he always brings windows into his conversations!), 'and I thought that as IBM was the world's largest computer company, they must be doing something right'. The logic was impeccable, but it occurred to me that if a rather keen computer salesperson were to walk into Gerry's office that morning and, on the assumption that most businesses were cost conscious, were to offer him a system costing 40 per cent less than IBM (a not impossible proposal) he could be wasting his and Gerry's time. It

was not the price that motivated Gerry's choice of system but the security that the system would work.

When people speak they inform us of their priorities, though not necessarily directly or with candour. By listening we learn about their priorities and their values. They also reveal their inhibitions – the factors that motivate them to say 'no' to our suggested solutions – and this information is of direct benefit to us. By elaborating on their inhibitions – perhaps they do not trust our intentions – we can make helpful statements that address these inhibitions. In any event, understanding what is inhibiting a solution must be beneficial to our interests because unless and until we remove or meet the inhibition we are unlikely to make progress.

Much of the time spent in debate is in an effort to persuade the other negotiators to see our point of view. We try to influence their perceptions of the possible outcomes and persuade them to modify their expectations. Hence, we make statements to these ends, though not always consciously. We marshal whatever arguments we can think of that present our views in the best possible light and try to counter their arguments that contradict our own. Put this way you can see why carelessness in the debate phase can undo a great deal of our effort to influence their thinking. It certainly never ceases to amaze me the number of times that I see negotiators browbeating the very people they are supposed to be influencing. Careless behaviour of the argumentative kind actually works directly contrary to the tactical necessity of persuading them to work towards our objectives.

4.5.2 Assurance

The simplest verbal device can be used to motivate somebody to work towards your objectives. It does not necessarily evangelically switch them over to your views but it certainly contributes towards their doing so. I refer to a category of influencing skills called **assurance behaviour**. These can be as simple as saying positive things about the relationship between you (past, present or future). For example:

> I am sure that we can sort this problem out.

> We value the business we have done so far together and we look forward to continuing to do more business with you in the future.

> The fact that we let you down causes me even more pain than it evidently caused you.

These or similar statements are directed at assuring the other negotiator that you have positive rather than negative – or neutral – feelings about your relationship. You acknowledge that they are special and, by implication, that the matter under discussion is manageable within the positive range of your relationship. For example, faced with a very difficult negotiation – over a serious breach of ethical conduct by a firm of solicitors – the negotiator for the aggrieved party fully understood the concerns of the solicitors (fears of professional misconduct litigation, consequent

loss of reputation, etc.) and knew that such concerns could block progress in the negotiations if the solicitors decided to fall behind a preliminary defence line of saying little, admitting nothing and dragging it all out for as long as possible, bankrolled by professional indemnity funding. His opening assurance remark that 'Gentlemen, I am in the solution, not the retribution, business' had a plainly visible positive effect on the somewhat overly defensive solicitors. An agreement was worked out in a couple of hours to the relief of the solicitors and the satisfaction of the negotiator's clients.

Another good example of assurance behaviour at work comes from a top UK hotelier who found that assurance statements at the beginning of difficult interviews with irate guests often produced remarkable results – they came in ready to kill and went out happy to recommend the hotel. His technique was simple, almost corny, but it worked to some extent every time he used it. Faced with an angry guest close to having an apoplectic fit over some failing in the hotel's service, Hamish would take them into his office and say in quiet, almost hushed, tones: 'Before you say anything, I have three things to say to you: first, I unreservedly apologise for the distress we have caused you; second, I am going to listen to what you have to say, and third, I am going to put right whatever is wrong'. The atmosphere changed instantly he adopted this approach, and the angry guest would relax and tell this obviously sympathetic listener and human being what was wrong and why they had been upset. Thoughts of strangulation of their tormentor and general mayhem seemed to disappear instantly. Sometimes the formerly angry guest would begin to apologise for being a nuisance and tend to belittle his original complaint. The lesson is clear: assurance behaviour helps negotiators move forwards.

4.5.3 Questions

Given the importance of the task of establishing what the other negotiator wants, how badly he wants it and what he is prepared to trade to get it, the role of questions is overwhelmingly important. Yet negotiators can have difficulty achieving a questioning rate of one per hour – for most of the time they are talking, usually argumentatively, and to no good purpose. Questions are always a sign of effective negotiating behaviour – a rate of four questions per 15 minutes is a welcome sign that the negotiators understand the key role of the debate phase in establishing what each of them wants. Of course, the kind of questions you ask can make a difference, as can whether you are listening to their answers.

Broadly, there are two main types of question: **closed** or **open**. A negotiator should know the difference between them. Consider the difference: a closed question can sensibly be answered with a 'yes' or 'no'; an open question invites a more general and detailed response. For example:

Closed questions:

1. Do you carry out safety inspections?
2. Was this consignment checked?
3. Did you sign off the paperwork?
4. Are you having difficulty clearing the site?
5. Will you accept late delivery?

Open questions:

1. When was the last safety inspection?
2. What is the procedure for checking consignments?
3. Why did you sign off the paperwork?
4. How difficult is it to clear the site?
5. When is the latest we can deliver by?

Exercise 4D

Are the following questions open or closed? The answers are given in Appendix 2 at the end of the book.

1. Do you have a safety policy?
2. Will it pass inspection?
3. How did you calculate those figures?
4. Is that important to you?
5. What aspects of my proposal are acceptable to you?
6. Is that agreed?
7. Have you changed your mind?
8. How do you expect me to accept that proposal?
9. Can you do better than that?
10. How can you improve on your offer?

In practice, in normal interaction, though not necessarily in the formal circumstances of a court of law, the answers to questions can vary beyond the confines of the differences between closed and open questions. Some people answer a closed question with a long elaboration (for example, in reply to question 1 above, 'Do you have a safety policy?', 'Yes and a very good one it is too. It was praised by the Department of Energy…'), and some people answer an open question with a single word (for example, in reply to question 10 above, 'How can you improve on your offer?', 'Can't!'). However, in the main the closed question shuts off dialogue and the open question invites it. In negotiation we want to avoid the former and encourage the latter. Hence, increase your question rate and formulate more of your questions as open questions.

4.5.4 Summarise

Some people merely want to have their point of view listened to and understood. They react negatively to people who do not listen, who make it obvious they do not want to listen and who, having gone through the motions of listening, still do not understand what they were told. If this reaction is provoked it slows down progress and can sometimes reverse it. The person who feels that they are not being listened to slips into the argument range and the inevitable deadlock ensues.

Negotiators can avoid this happening by listening and demonstrating that they are listening. This illustrates two of the three roles of a summary. It informs the other negotiators that you have listened to what they have said and that you have understood them. Sentences such as:

'Let me see if I understand what you are saying…'

'Correct me if I am wrong but as I understand it you want…'
'OK, let me summarise what you want…'

provide the verbal mechanism for testing your understanding and demonstrating that you have been listening. If your summary is correct they have proof positive that you are listening and understand them; if it is incorrect they have the opportunity to clarify the points on which you misunderstand them. On either count they are happier than they would be in their absence.

A minor problem sometimes arises when negotiators mistakenly believe that because you have listened to them and have demonstrated that you understand them, that it necessarily follows or implies that you agree with them. This, of course, does not follow at all and you may need to make this clear in certain circumstances. For instance, you could insert the comment: 'Before responding in detail with my views on your position, I think it would be useful if I attempted to summarise what you have said to ensure that I understand it…' Merely repeating what someone says does not imply agreement with them and it does you no harm to make this clear occasionally. 'Nothing is agreed until everything is agreed' is a valuable verbal device to insert into the debate phase at key points.

The third role of a summary, beyond conveying proof that you have been listening and that you understand what they have said, is to redirect the attention of the negotiation onto the central theme of the debate. It is not uncommon in an unscripted interaction for the participants in the debate to wander off the topic, or to become repetitive, or to move into dangerous and contentious areas. A judicious summary of what has been said in respect of the topic has the useful role of bringing the debate back onto the main track you wish to go along: 'Let me summarise where we are at. You have outlined your views along the following lines… I shall explain to you how we see the problem by briefly outlining the following points… Now, how can we move forward from there?'.

4.6 How Not to Disagree

Negotiators begin with different solutions to the same problem and, hopefully, end with a common solution. Different solutions, like different opinions, are a cause of tension. When our interests are at stake, we do not like people disagreeing with our views as to what should happen. The beginning of a negotiation is usually more tense than the later stages (indeed, the close proximity of a solution often induces degrees of euphoria, which are dangerous in themselves). If the gap is large we are tense. If the gap is narrow but the issues are highly contentious, we are also tense. If we feel threatened, or badly let down, we are tense. The other negotiator is both somebody who can help us to get what we want and somebody who can stop us from getting it, at least in a form that meets our expectations. Not surprisingly, we have an ambivalent attitude to the other negotiator. On the one hand we are ready to be helpful and on the other we are ready to fight back if our darkest fears are realised.

With tension come mistakes. We misjudge, or judge too quickly. Given that people tend to highlight their differences when they start discussing what to do about them, we react emotionally to what (we think) we hear, as if their first statements are the extent of their intentions towards a settlement. Not taking too seriously (in the sense of letting it determine our attitudes) what people say at the beginning of a negotiation – particularly where the issue is fraught – is good, though seldom taken, advice. It is as if our worst fears are realised immediately – 'they will never accept the legitimacy of our position' – when in fact all they are doing is setting out their views, perhaps to give themselves negotiating room.

There is also the possibility that we have made a mistake in our assessment of the situation. We might believe, on the evidence that we have available, that we have a strong case for, say, compensation for some misdemeanour on the part of one of our suppliers or that, say, a supplier is attempting to charge us excessively for a service. It would be difficult in these circumstances for us to remain casually indifferent in our emotional feelings towards the people against whom we believe that we have a grievance. Yet not to do so could undermine our negotiating abilities.

Brindley Airport uses a computer bureau to manage the payroll of its 2000 employees. Everything worked smoothly for the first year of the contract but one month the payroll failed to be supplied and, by using the previous month's records, employees eventually were paid manually by the airport management. The disruption surrounding this unfortunate incident was extensive. Many employees left their posts to besiege the personnel office – causing a failure in service to passengers and to the airlines – and it took considerable effort on the part of the management to prevent a total stoppage of work.

Following numerous telephone calls between Brindley and Omega, the computer people, a letter was sent to Omega setting out a claim for compensation for the disruption (including the cost of paying cash to the employees) and asserting that Brindley regarded Omega as responsible for any liquidated damages claims the airport received from the airlines. Brindley's management were determined to punish Omega for their failure and to withdraw from further discussions on Omega computerising personnel records, traffic management and scheduling.

Both parties met to discuss the claims for compensation and the decision not to proceed with negotiations on future business. The atmosphere was not pleasant. On Brindley's side, they were still smarting under the robust criticism they had received from their colleagues for the disruption and what they felt was a failure of Omega to act promptly when the crisis struck. On Omega's side there was considerable anger at what they saw as an attempt to blame them for something that was not entirely their fault and which also caused them to suffer disruption in their services to their other clients. The situation was primed for a blazing row.

Brindley's side led off with a catalogue of complaints about the failure of the payroll to appear on time and a detailed analysis of the telephone calls that they had made to Omega. They spoke about compensation claims from

the airlines, without being specific about the amount (in truth the only serious claim for a delayed departure amounted to £17 000 and this was felt to be a 'try-on' from an airline whose record of punctuality was notoriously bad anyway). They bluntly asserted that they had no intention of extending their dependence for computer services to a company as 'incompetent' as Omega.

For their part, the Omega managers repudiated the charge of incompetence, counter-charged Brindley with causing the problem in the first place (without detailing how), threatened to sue Brindley for defamation following the statements about Omega the personnel manager made to local TV during the disruption, and counter-claimed for an unspecified amount that they had lost in servicing their other clients.

It would, of course, have been better for one or both sides to have spent less time asserting its own case and more time finding out what the other side had to say about the problem, **and its solution**. A dose of professional calmness was needed but was absent. It is as if they had come for a fight and were going to be disappointed if they failed to have one. Each blamed the other. Moreover, their attitudes coloured their approach to the new information each had to offer.

Even in the opening session, there were warning signals that all was not as each had conceived it. If all is not as it is believed to be, it is essential to find out the extent of the deviation of reality from perception. The emotional and adamant approach of Brindley's people smothered their curiosity about the implication of Omega's statements that they too had a claim against Brindley for the failure of the payroll. They simply dismissed the whole notion that Brindley could in any way, shape or form be liable for Omega's manifest incompetence and took its mere assertion as further proof that Omega were not just bad, they were wicked too.

What else could they have done? Apart from any failings in their preparation – had they asked which was more important: punishment or solution? – they were badly in need of skill in handling a disagreement. Of course, this was partly caused by their self-assurance that they were completely in the right: it was Omega's contractual duty to provide the payroll; they had not done so, therefore Omega was totally in the wrong. If Omega dissented from that evident truth, more's the pity for them. Not only would it cost them a compensation claim but it would also cost them additional business.

The first thing to be aware of when faced with a disagreement about anything is the possibility (no matter how remote) that you, not they, are in the wrong. Being wrong is not serious, providing you have a means of correcting your error without a complete loss of credibility. But being wrong without such a means – even deliberately eschewing the need for one – is a serious mistake in negotiation. This applies particularly when we are *absolutely* convinced that we are in the right, as we could be when we are dealing with an area in which we are totally competent, or where the facts are so well established that we believe only the ignorant are unaware of them.

Let me illustrate the most effective way of dealing with disagreement over a self-evident truth by way of a parable from the world of competitive sport:

Suppose you are a keen follower of soccer and this season your team, Ibrox United, scored the most goals, won the most matches and earned the most points to become soccer champions of the year. You are celebrating your team's success in a bar with some friends. A stranger comes into the bar and orders a drink and you overhear him telling the barman that he too is celebrating a soccer team's success this season. 'Yes, Luigi,' he tells the barman, 'Midlothian are without doubt the best team in the country this year'.

Now this is astonishing news to you because Ibrox United, for the reasons rehearsed above, are the 'best team in the whole country' and your astonishment at the insult spills over into mild resentment that this 'idiot, fool and ignoramus' is deliberately provoking you and your friends by his wild assertions.

Exercise 4E

Consider what you would do in such a situation before reading on. (I exclude the obvious choice of minding your own business and leaving the ignorant to wallow in their illusions.)

Suppose you have an opportunity to challenge this assertion – perhaps Luigi unwisely introduces you to the stranger and asks if you agree that Midlothian are the best in the country – how would you tackle the disagreement?

Most people would simply tell the stranger that he did not know what he was talking about. And the more convinced they were of their facts, the more assertive they would be, perhaps even being sarcastic or mildly mocking of him:

'Come, have a drink and we'll tell you about a real team of real champions,' is about the nearest to being conciliatory you are likely to be. However, the stranger holds his ground: 'Ibrox United is not the best team in the country by a long way, and, moreover, Midlothian is so far ahead over Ibrox in 'bestness' that it is a great mistake for you to celebrate, rather than commiserate over their many failures.' Those of you who have been in bars in similar situations will know of the probable course of events to follow!

Yet the fact is that you could be in the wrong in your assessments of the relative merits of the two teams. Your assurance that you were right factually is no protection against manifest error. You have made the elementary mistake of disagreeing with somebody without discovering the source of their assertion. The more sure you are the more assertive you will be, and the more likely that your inability to accept that you could be wrong will drive you towards a breakdown in your relationship with the offending person. This is a common route to deadlock in negotiating situations.

Returning to the bar, what could you do at the start of your discourse with the stranger that will protect you from both error and angry deadlock or humiliation?

The main thing you must do is find out the basis of the other fellow's assertion of something that you know to be counter-factual:

'On what basis,' you might ask, 'are you convinced that Midlothian – worthy as they are to have reached half-way up the points table, to have scored an average number of goals and to have won about half of their matches – are the best team in the country?'

By asking a question you both inform and protect yourself. If he shows that your own factual beliefs are wrong you will learn something that you ought to know. (Even though, in this case, he is unlikely in your view to produce any worthwhile evidence that contradicts the public record, it is still worthwhile in principle to check in case you have missed something.) Also, by asking for the basis of his views and not attacking his holding of them, you protect yourself, in the (admittedly improbable) circumstance that he is right about Midlothian, and you are wrong about Ibrox United, from having to make a humiliating climbdown. In a negotiating context, so serious is the prospect of a humiliating climbdown that negotiators have been known to cling to their beliefs, long after the evidence is available that they were wrong, for the simple reason that they have no ready means of abandoning them without impairing what they perceive to be their negotiating credibility. What they usually do is refocus their attention on the personalities or other behaviours of those by whom they perceive they have been humiliated (though, of course, it was their own misguided handling of a disagreement that caused them to be vulnerable to humiliation in the first place).

What might the stranger answer in response to your question?

'Well, Sir,' he might have said, 'I am celebrating the conclusion of my studies of the nation's soccer teams – I am Professor of Abnormal Psychology at Riccarton University – and my research shows that the Midlothian as a team have the best psychological profiles of all teams in the country. Do you know, Sir,' he might continue, 'that in the terms of psychopathic tendencies, neurosis, schizophrenia, manic depression, and catatonic relapses, Midlothian have the best scores of anybody I have ever studied. Indeed, Sir, compared to a team like Ibrox United – by far the worst team in the country on these measures – Midlothian are positively brimming with good health.'

Asking questions therefore is a brilliantly simple device that both informs and protects you from charging in at the first sign of a disagreement (they may not be wrong, you might just be uninformed). It also enables you to lay the groundwork for them to back off from a wrongheaded position without carrying with it the risk that to do so in some way humiliates them. People will hang on to strange notions long after objective evidence suggests that they are in error, if only because their personal (and perhaps) public investment in the notion is too large for them to disregard. You have only to think of what it took in space technology before the last member of the Flat Earth Society finally shut up shop and went home – and we all know of honorary members of various flat earth societies who cling on to their discredited doctrines. By asking questions we let the perpetrators of nonsense condemn themselves when they are patently incorrect, or we allow them to redefine their position in such a way as to qualify it into a new category (by 'best' the professor was not talking about the team that had the best scoring results; he was talking

about their psychological health). By qualification we identify that we are in contention about different things and therefore we are not really in contention at all.

Suppose we also disagree with their qualification? Fine. We have identified where we disagree. We can move on in the debate phase to explore what prospects there are for both of us to mediate our differences in a deal acceptable to both of us.

Negotiations begin in disagreement and, hopefully, end in agreement. The process of getting from one to the other is fraught with risk. Negotiations break down because the disagreement is too fundamental or because it is badly handled – the people get in the way of the deal. The negotiator is trying to find a solution even where there is fundamental disagreement and trying to avoid a situation where the people – including himself or herself – get in the way by snatching deadlock out of the jaws of compromise.

One way to make a fundamental disagreement worse is to require the other negotiators to acknowledge that they are in the wrong and that they must drop their views or perceptions as a precondition of reaching a settlement. Rhetoric and negotiation do not go well together. People sometimes have a need to co-operate in some measure despite their fundamental differences. If the negotiators concentrate on their fundamental differences only, there will be no negotiation.

It is unlikely that a person with strong views on religion would recant them merely to agree with an unbeliever on the price of a house. Obvious, when presented in this way? Yet negotiators in these circumstances have been frustrated in the past by the perceptions of the other side that some form of recantation is what is required or implied in the search for agreement. Public comments on the other negotiator's religion, politics, motivation and culture are seldom helpful, though in free societies they are unavoidable. As a negotiator, therefore, you can help the search for agreement by refraining from commenting in this vein or linking your solutions to their views of the world. Negotiate on the direct issues that affect your relationship and ignore the background noise which, if excited, will soon drown out everything else you say.

Similar advice to negotiators applies when dealing with the highly charged problem of a hostage negotiation. If the security forces insist on the impossible demand that the terrorists cease to hold the views they do about the efficacy or truth of their cause, or they insist that they recognise the criminality of their actions, you can expect little progress to be made in arranging for the release of the hostages. Instead, the negotiators are advised to concentrate on securing agreement with the terrorists on the trivial issues – and the more trivial the better – of food, comfort and communications. The security forces have no more need to 'negotiate' a change of heart, politics or religion of the terrorists than they have to concede a change in their own status as the instruments of the rule of law. The distinction between the terrorists and the police is one that can, and should, be maintained, for it legitimises what ultimately will happen to the terrorists, namely their capture and commitment to judicial processes. Attempts to do otherwise put at risk the safety of the hostages without gaining anything from their captors.

We handle fundamental disagreements by separating the issues for negotiation from the trenchant beliefs of the negotiators. We try to prevent people getting in the

way of the deal. We focus on what can be achieved – no matter how small initially – and seek to build agreement step by step.

If we start in disagreement, how do we move towards agreement without somebody giving in? Having ensured that we are clear on what we are disagreeing about – by questioning and not challenging the disagreement – and taking care not to widen the issues that might be negotiable to beliefs that patently are not, we need to explore the potential for bridging the disagreement in some way that does not compromise the negotiators' wider interests. This requires that we discover and understand the inhibitions that prevent agreement.

What is an **inhibition**? Inhibitions are whatever motivates the other negotiators to reject our suggested solution. They are often hidden and require to be dug out – perhaps the negotiators are not sure themselves as to why they oppose our solution and prefer their own; perhaps they do not know how to search for their interests; perhaps they are less than candid about their inhibitions because of some shame or embarrassment in holding to their views; perhaps they do not understand what we are proposing. For you as a negotiator this situation poses some awkward questions, as well as providing a useful device to progress towards agreement.

Exercise 4F

What would the negotiator have to do to clear the way for an agreement in each of the following cases? Consider your answers carefully before reading on.

Example 4.1

A potential partner in a venture was not keen to accept the amount of the minimum investment it was proposed he should make. He criticised the numbers, questioned how they had been calculated, wanted them checked over again. His inhibition, however, was his nagging suspicion of his potential partners – 'Were they going to cheat me?' was how he put it to his advisor – a view he could not articulate openly without risk of insulting them and one he could not ignore in case they were up to no good. He chose instead to attack the details of the project.

Example 4.2

A union objected to new shift schedules on the grounds that they put at risk the safety of air passengers from maintenance engineers working up to 12 hours a day. The management argued that this was nonsense as with overtime working many engineers were clocking 12-hour shifts on a regular basis. The union's inhibition was the fact that the new schedules would substantially reduce overtime working but they could not present it this way without compromising the union's official stance against overtime working, nor could they antagonise their members by agreeing to any scheduling system that denied them opportunities to earn higher incomes from overtime working.

Example 4.3

A buyer objected to the price. His inhibition was that the purchase would coincide with other peak expenditures and he wanted to minimise the price of this item. The seller pressed for the full price. His inhibition was that an additional discount on this price to meet the buyer's inhibition would undermine his own profitability by creating a precedent.

Example 4.4

A buyer was wary of accepting the same quantity of radiators for the new season. He had two inhibitions: first, he had been left with surplus stock from last year's mild winter, and second, the models were about to change their styling and surplus stock this season would have no resale value next season.

In each of these examples, the negotiator would first need to identify the inhibition preventing the other negotiator from agreeing, and second, he would need to propose a solution that addressed the inhibition. This could come about by finding a form of words that took account of the inhibition, or by directly offering something that compensated for the felt loss, or which removed the prospect of a loss.

Much of the debate phase of negotiation concerns the search for inhibitions, not all of them hidden as deep as those in Examples 4.1 and 4.2, and of clearly understanding their content and their extent. You have to know how far you might have to go to make an agreement possible, if only to judge whether going that far made

the deal worthwhile. Knowing what inhibitions the other negotiator has is a first step towards removing them as obstacles to agreement, or to concluding that the obstacle is irremovable.

In Example 4.1, the proposer of the joint venture might want to address the cautious partner's inhibition with some assurance that the investment was safer than he perceived at present. Perhaps this could be done by association – 'We are backed by the following Blue chip businesses'; 'We are already working with household names in the business' – or perhaps by lowering the initial entry price – 'You can make your investment in three parts, the first on joining, the second on our completing the building and the third when we let it'. None of these completely removes the risk, of course, but they might be enough to reduce the impact of his inhibitions on the deal.

Once the management in Example 4.2 spotted the hidden inhibition on overtime working it has the choice of being candid – 'Yes, it does reduce overtime working, but that is its intention' – and facing the consequences. These might boil down to some form of compensation – the consolidation of earnings from overtime into the normal hourly rate – or of trade-off in some other area – 'These proposals will improve our chances of surviving commercially and of your members keeping their jobs'.

In Example 4.3, a proposal could emerge that allowed the buyer to pay the full price in a period when his other expenditures were below normal, and in Example 4.4 some proposal along the lines of the supplier taking back unsold radiators would overcome the inhibition of the buyer.

In all these cases, merely stating the inhibition suggests various ways of removing it. Hence the pay-off from identifying inhibitions in others and revealing your own at some point. To state an inhibition is to imply that if some way can be found to remove it, then there is a possibility of a deal. You should, therefore, be zealous in your hunt for inhibitions in negotiation.

4.7 Signalling

Beginning in disagreement and moving towards a settlement, the negotiators face a strategic difficulty only partly addressed so far: 'How do we move without giving in?'.

Consider Brindley's negotiators in dispute over Omega's liability for damages. Given that people claiming damages for losses seldom understate their claims, it is likely that Brindley would make high demands and back them with firm to rock-hard rhetoric in order to demonstrate to Omega their seriousness and determination. They might feel that any sign of a willingness to alleviate their claim could be interpreted by Omega as a sign of weakness, which could encourage Omega to make no offer of compensation, backing up their stance with tough talking. Both sets of negotiators might be willing in principle to mitigate their opening positions, given that the alternative of costly and time-consuming litigation is unattractive and has little to do with managing airports or computer bureaux. Here, a sign of weakness could be

fatal; yet a deal has to be struck if the negotiators are to settle it without litigation.

How can or do they move? Fortunately, humankind long ago developed the means for signifying movement without a collapse in their stances on contentious or competitive issues. If you listen to Brindley's dialogues carefully you might hear something like this:

(a) 'We have stated explicitly to you the costs of £110 000 that we have incurred as a result of your failure to deliver the payroll and I must stress that unless we receive compensation for our losses we have no intention of continuing our discussions with you on future business.'

(b) 'We have stated explicitly to you the costs of £110 000 that we have incurred as a result of your failure to deliver the payroll and I must stress that unless we receive some compensation for our losses we have no intention of continuing our discussions with you on future business.'

Exercise 4G

Consider carefully the difference between these two statements before reading on.

The difference lies in a single word, yet this single word transforms the sentence dramatically from a negotiator's point of view. In (a) the speaker says he requires 'compensation' for his losses while in (b) he says he requires '**some** compensation' for his losses. In both cases he mentioned the sum of £110 000 as the amount of his losses and the intention of the first sentence is to claim that full amount, while that of the second sentence is to claim some amount, clearly less than £110 000, but by how much less is not yet decided. We speak of the negotiator **signalling** a willingness to move, usually by a shift in language from firm absolute statements to vaguer relative statements. Everybody signals – they learn it from normal human discourse – but not everybody is conscious of what form their signals take nor why they use these forms at all. They just do it. You signal too and once you recognise what you are doing you will choose more carefully when to signal, and you will identify signals in others and choose to react to suit the circumstances.

Exercise 4H

Write down on a sheet of paper the signals in the following statements before reading on.

1. 'It would be extremely difficult to meet that delivery date.'
2. 'We do not normally extend our credit facilities.'
3. 'It is highly unlikely that my boss will agree to a free upgrade.'
4. 'Under these circumstances we cannot agree to compensation.'
5. 'As things stand our prices must remain as listed.'
6. 'I can't give you a better discount on your current volumes.'

The signals used in Exercise 4H are discussed below.

1. 'It would be **extremely difficult** to meet that delivery date.' It is no longer impossible to meet the delivery date, merely 'extremely difficult'. This provides

an opening for proposals to overcome the difficulty. This signal usually emerges after some considerable discussion on why they cannot meet the deadline.

2. 'We do not **normally** extend our credit facilities.' 'Normally' is a signal commonly used to indicate that in special cases or circumstances the normal rule need not apply. Many rules and regulations use this signal in their clauses to indicate the degree of discretion that there is available to the authorities. For example, in universities, the examination rules often use this signal to give the examiners discretion: 'A student normally shall be deemed to have failed if he attends less than three out of four of his laboratory tests'. Find a convincing reason for missing some laboratory tests and you might be excused a failure.
3. 'It is **highly unlikely** that my boss will agree to a free upgrade.' The subordinate is signalling that he does not have the authority but that you might want to try his boss. The signal 'highly unlikely' covers the subordinate's resistance to the free upgrade while inviting you to try harder.
4. '**Under these circumstances** we cannot agree to compensation.' Change the circumstances and we might be able to agree to your claims. By linking a decision to specific circumstances the signal invites imagination in changing the circumstances in some way, perhaps by redefining them, or enlarging them or disregarding them. A common litany among shop stewards when they face the application of a rule in respect of one of their members is: 'Broken noses alter faces; circumstances alter cases'. Often the shop stewards' advocacy skill relies on finding exceptions to tightly drawn rules.
5. '**As things stand** our prices must remain as listed.' If things stood differently then we could relax our prices. Again the signal invites you to help the other negotiator by finding an exception to the rules that bind his decision. It might mean your moving some way off your own stated position – 'as things stand' – and he will reciprocate.
6. 'I can't give you a better discount on your **current** volumes.' An invitation to move off a discussion on current volumes to other, higher, volumes. Many people not listening intently would only hear the words 'I can't give you a discount'. Naturally, such cultivated 'deafness' prolongs or disrupts the negotiation.

The signal indicates an invitation to explore other possibilities. It is the weakest and therefore the safest commitment to a move. There is absolutely no danger of giving in because it invites the other negotiator to move – by following the signal – without commitment on the part of the signaller. Consider again any of the signals in Exercise 4H: none of them put the signaller at risk.

For example, consider (1): 'It would be extremely difficult to meet that delivery date.' On its own this is a statement which, if not responded to by the listener – who offers no suggestions on how it could be made less difficult – does not weaken the speaker. He is merely stating a fact about the extreme difficulty of meeting some requirement of the listener. If the listener ignores the signal, the speaker's invitation to consider a movement is also ignored and his negotiating stance is not compromised. Similar considerations apply in each of the other examples.

Signals are something like a 'safe conduct pass' that protects the bearer from molestation which he otherwise might experience. Without a signalling device in our discourse we would be at the mercy of the interpretation the other negotiator puts

on our evident willingness to move. The signal is in effect a bridge to a possible proposal, though the negotiator must be wary as to what the proposal might contain until he is sure that he is addressing the right problem. There is a close affinity between inhibitions and signalling – the one usually identifies the other. To state an inhibition explicitly is in effect to signal along the lines of: 'address this inhibition and I can consider coming to an agreement'. Hence, spotting an inhibition is a clue as to a possible solution. To hear a signal usually identifies an inhibition. Both require the same response.

A signal is only an indicator of a potential solution and an inhibition is an indicator of a potential problem. Before making a proposal to deal with either, we must clarify the signal/inhibition to ensure that we understand its scope and therefore its potential:

> When you say that you must receive some compensation for the delays at the airport, could you be more specific as to what compensation you are looking for?

This tells the signaller that you have noted the distinction he is hinting at between £110 000 and 'some compensation' and while asking him for more details, signals back that you are not averse totally to paying some compensation, presumably as long as it is a small amount. Now both sides can move from their opening stances of '£110 000 and not a penny less' versus 'absolutely nothing and not a penny more'.

> While acknowledging your difficulty about increasing the discount level for our current volumes, could you perhaps indicate what discounts are available for much larger volumes?

Here the negotiator is sending an assurance ('acknowledging your difficulty') with a positive response in favour of higher volume discounts. Even the use of the word 'difficulty' subtly protects the negotiator from a formal acceptance that a discount for current volumes is precluded; after all a difficulty is not an impossibility. He is suspending that line of argument in order to explore the relationship of discount to volume. The other negotiator can now indicate his schedule of volume discounts as a way out of the problem. It is no longer the case that the seller is offering no more discount with the buyer insisting on getting one, because they have now moved to discuss, not the principle of the discount, but its application to levels of volume.

Signals do not in themselves break deadlocks – the indicated area for potential compromise may not be attractive to the other negotiator; indeed, it may be totally off limits as far as he is concerned – but signals do indicate that compromise in principle is not excluded. They point the way out of the debate phase towards proposals.

Exercise 41

Read the following statement by the New Zealand Prime Minister on his country's intentions towards two French secret service agents captured after the *Rainbow Warrior* bombing in 1986:

> There is no question that New Zealand is adamant that the French agents will not be released to freedom.

Consider whether the Prime Minister was:

i. prepared to release the French agents
ii. not prepared to release the French agents

before reading on.

The Prime Minister was signalling that he was prepared to release the French agents. The key signal is in the words 'not be released to freedom'. This suggests that they might be released into some other status, i.e. they would not be released to return in freedom to France but they might be released from a New Zealand jail to serve their sentences in some other jail. A few months later they were released to serve their time out in custody on a French Pacific island (not long after that they were returned to France on flimsy health grounds and promoted back into the armed services).

Epilogue

In negotiation we cannot negotiate a debate, nor can we negotiate principles, beliefs, prejudices, feelings, hopes, ideals and attitudes. We can only negotiate proposals. But before we can safely get to proposals we must spend some time in debate. How long we spend cannot be determined unilaterally nor can it be predicted. The interaction between the negotiators precludes detailed planning. Each responds to the other. It is more like a game of football than a symphony. In football the players take off in pursuit of the ball and each other in all directions – whatever their managers had planned beforehand! There is no ordered scripting, no planned performance. That is the joy and the tears of the game for players and spectators alike. In a symphony, each member of the orchestra (and most of the audience) knows exactly what notes to play and when to play them, and woe betide any violinist or bassoon player who gets them wrong – conductors and fussy *cognoscenti* of music are unforgiving. The joy of orchestral music is its absolute and unvarying predictability.

In debate we are setting out our views, creating our negotiating room and probing the prospects of a deal with each other. We do not know for sure what they will say, let alone what they will accept. To prolong debate longer than necessary is a major source of risk in negotiation. The sensitivities of people in debate are sufficient to provoke rounds of destructive and frustrating argument and the longer we take to make constructive movement possible the more we risk an outbreak of destructive argument. When people get in the way of a deal it is almost always caused by the mismanagement of the debate phase.

What could Eric have done to set his negotiations with Ron over the stock-out problem onto a constructive plane? For a start he should have listened to what Ron had to say. He needs to know on what precise basis Ron was looking for compensation. He will not find this out by giving Ron the benefit of his own assumptions (invariably negative) of why he believes Ron thinks he deserves compensation. Eric should listen more than he talks, not because he might be softened up by what Ron says, but because the clues as to what Ron might consider an acceptable settlement will be buried in what he says and how he says it. Also, the case for compensation might have merits which will prove irresistible in the business and it might be in Spanner's interests to make the best of a poor situation. Competitive changes restructure remuneration and the terms of business and if Ron is merely articulating the coming irreversible changes, Eric ought to be interested in knowing why and to what extent these changes are going to affect his business.

Ron might, of course, be so out of touch with the competitive realities that his claim for compensation has no chance whatsoever of being considered. Again Eric has an interest in getting Ron to see this without unnecessarily antagonising a customer. Why? Because today's irate and insulted customer might influence tomorrow's business. I know of a management consultant who, when he was a junior sales representative on the road, was so antagonised by a hotel chain by their arrogant attitude to his complaints about their lack of attentive service, that 20 years later, when his office is booking hotel accommodation for several dozen seminars a year, he will instruct them to choose any other hotel chain but that one to place his business (even though it is now owned by another company). Brand sales rise and fall and it does not take too many Rons exercising their powers of discriminating purchases to cause modest but cumulatively damaging fall-offs in sales of a particular brand. Moreover, with the retail business shifting from a 'pile 'em high and pile 'em anywhere' approach to a shelf-life policy based on scientific data about the profit earned from each square inch, Spanner Brothers could very well find themselves at a disadvantage if their sales were marginal against their rivals. And what impact do you think there would be if Ron moved up to become Director of Purchasing while these changes were taking their effect?

In listening to Ron, whose complaint was his loss of profit from the stock-outs, Eric might have detected a signal that Ron did not mind how the profit was restored – whether by compensation, credit, discount or marketing help – which might suggest to Eric a possible joint solution to restore both Spanner Brothers' and Fraternity's lost profits (bearing in mind that the strike cost Spanner Brothers too). Suppose Eric could formulate a proposal that combined a volume discount per case of Console with a joint special offer of some kind. This could raise sales of Console in Fraternity stores, improve their margins and their total profit (margin multiplied by sales). Instead of a bitterly angry Ron (and let us not forget an equally angry Eric) and a damaged relationship they could have found a way out of the deadlock towards a better business deal for them both.

The power of effective debate is its direct route to effective (and winnable) proposals. True, not all differences are reconcilable. Negotiation is not a panacea for solving the unsolvable. But effective debate that discovers the irreconcilability of the aspirations of two negotiators is well worth its outcome. Better to discover the truth

that our interests are irreconcilable *as things stand* than to err into believing them irreconcilable when in fact it is our debate behaviour that has made them so. Moreover, discovering the nature of the irreconcilability is also a gain because it indicates what has to change if the parties are to be reconciled. For instance, discovering that a deadlock over the future of the Falklands/Malvinas is based entirely on the unwillingness of the British to discuss sovereignty and the Argentines not to discuss it, at least eliminates the possible belief of either party that the other is bluffing. If they are clear that there is no bluff, at least neither side will take risks to call it, which is a degree better than going to war to prove there is no bluffing about our intentions.

Debate opens the way to proposals but it does not follow that we debate in only one session, never to return to it throughout the negotiations. Any time we ask a question or make a statement we are in debate, irrespective of what we are questioning – it could be the other negotiator's proposals – or what we are stating – we could be stating our views on the other negotiator's bargain. You should see debate as an ongoing activity that takes up roughly 80 per cent of the time spent in the face-to-face interaction. It may be that there are prolonged periods of debate in the early stages of negotiation with shorter bursts of debate as we approach the conclusion. Of course, a negotiation that deadlocks could have 100 per cent of its time spent in debate (or more likely, argument). How we allocate our time is all important. If we cannot negotiate a debate, it follows that we must move towards proposals (via signalling) and it is to this phase that we shall now turn in the next module.

Review Questions

Which of the following are correct? Note down which of the responses you think is correct before checking with the discussion of the answers in Appendix 2.

4.1 In the debate phase you should aim to:

i. Complete it as quickly as possible to avoid argument.
ii. Discover the other negotiator's interests and inhibitions.
iii. Ensure that the other negotiator understands your positions.
iv. Inform the other negotiator of your interests and inhibitions.

4.2 Negotiators signal in order to indicate:

i. A willingness to move.
ii. A desire for the listener to move.
iii. That a proposal is imminent.
iv. A preference for a compromise.

4.3 The most effective way to handle a disagreement is to:

i. Point out where the other negotiator is factually wrong.
ii. Ask questions.
iii. Explain with great courtesy the grounds for your disagreement.
iv. Summarise the case against the other negotiator's views.

Module 5

A Proposal is Not a Bargain

Contents

Prologue

5.1 Introduction

Jacques Duval (JD) Let me get this clear. You cannot accept our offer of a 5 per cent increase in performance bonus because this barely covers your additional costs?

Antonio Mercanti (AM) That's correct.

JD OK. How about if we made it 7 per cent?

AM Sorry. I'd love to be more reasonable but we just can't afford anything under 10 per cent.

JD 10 per cent? Well, if I made it 10 per cent, would you accept a penalty clause?

AM We're not interested in penalty clauses.

JD It would make life easier for me if you were. Can I not tempt you to think about them?

AM Sure, I'll think about it but I also think that at this meeting we should settle the performance bonus first and leave the pros and cons of the complications of penalty clauses to another day. We'll accept your offer of 10 per cent and we suggest that it applies for every single point improvement over the target of 75 per cent uptime.

JD We were thinking of applying it to every five points improvement…

AM Too high a barrier to jump in one go. It will take us a while to get momentum going, to fix all the little causes of downtime, before we see real

improvements. If performance is measured in five point blocks we could be working hard for some time before we get paid, even though you would be benefiting from improved uptime in the 75–8 per cent range almost immediately.

JD **Well if you are prepared to consider a penalty clause I'll accept single point improvements. What about sliding scales for performance payments?**

AM **Sliding scales are very complicated. Why don't we keep it simple and do it on a straightline basis?**

JD **I'll drop sliding scales if you can look again at the minimum target of 75 per cent.**

AM **Is that your final position?**

JD **Well, I… er…**

Exercise 5A

Identify and note down from the text above all the proposals made by Jacques Duval before reading on. You should be able to find seven proposals.

A proposal is any form of statement that makes a suggestion about how to proceed during the negotiation, or which indicates a possible solution to the issue under discussion. It can vary from the simple statement: 'Let us take the warranty issue first and then deal with the other matters', to the more complex offer of a solution: 'OK, I'll drop that demand if you'll reconsider the overtime rates'.

Proposals crop up all the time. They are different from any of the behaviours in the debate phase because they make a suggestion, albeit tentative, of how the two negotiators might agree on some issue that they are discussing. The problem for most negotiators is the tendency to use slack language in the proposal phase (a tendency that becomes even more damaging in the bargaining phase later) which directly, though not always obviously, undermines the impact of their proposal and contributes to the other negotiator perceiving that they have a weak commitment to it.

I can illustrate this assertion through a short diagnosis of the errors made by Jacques Duval during his negotiation with Antonio Mercanti, the supplier of the machinery causing uptime problems at Royale. I have cut out some of Jacques' supporting speech during this stage of the actual negotiation on uptime and recorded only those sentences directly concerned with proposing.

Let us examine each of Jacques' attempts at making proposals to Antonio.

1. **'How about if we made it 7 per cent?'** This is the weakest form of proposal. It leaves it to Antonio to decide whether 7 per cent is good enough. As Antonio is not required to do anything in return for accepting 7 per cent, his best bet – and the one he took – is to challenge the offer with a higher counter, to which Jacques gave in.
2. **'If I made it 10 per cent, would you accept a penalty clause?'** Another weak approach. Jacques is improving on his offer of 7 per cent and also asking Antonio to accept an onerous penalty clause. Why Jacques thinks that Antonio should

concede a penalty clause on the basis of a request after Jacques has moved to 10 per cent is a matter of conjecture. Experience suggests that negotiators are not overly generous in response to free gifts and certainly not when an onerous condition is presented as a question. Negotiators (rightly) react to these types of question-proposals as in example 1 above.

3. **'Can I not tempt you to think about them?'** Another example of a question-proposal. Why should the listener volunteer to think about something – a penalty clause – onerous to him? If you want someone to do something for what you are offering, make it a condition on your doing something for them.
4. **'We were thinking of applying it to every five points improvement…'**. About as tentative as you can get! Jacques betrays here his lack of confidence in his proposal. From Antonio's point of view, Jacques can think as long as he likes about the five points threshold but there is little likelihood that Antonio will agree to something onerous to him as long as Jacques implies by his language that he is not too sure of his demands.
5. **'If you are prepared to consider a penalty clause I'll accept single point improvements.'** Sounds far more impressive than it is. Jacques is only asking Antonio to consider, not commit himself to, penalty clauses, as yet unspecified, in exchange for his acceptance of Antonio's specific demand for single point improvement schedules. Antonio could say 'yes' to Jacques' proposal, and give purely nominal consideration to penalty clauses (rejecting them, of course), and thereby gain an important demand of single – not five – point thresholds for earning a performance bonus. For this exchange Jacques gets nothing, which, to be fair, is all he asked for.
6. **'What about sliding scales for performance payments?'** An almost pathetic plea from Jacques for something he wants. Antonio is very unlikely to agree to anything presented to him so tentatively. He merely rehearses his arguments against sliding scales and leaves it to Jacques to pursue the matter. Which he does by another weak proposal.
7. **'I'll drop sliding scales if you can look again at the minimum target of 75 per cent.'**. A classic example of Jacques offering something tangible – dropping his demand for sliding scales – for nothing. Antonio is only required to 'look again' at the minimum target. Anybody can 'look again' at anything without changing his mind, and when he gets something in return for nothing, he is neither under pressure to trade, nor under serious threat that his intransigence will not be rewarded.

In this module we shall examine effective and ineffective proposal language and what makes a proposal different from a bargain.

Dialogue

5.2 What is a Proposal?

Movement in negotiation is essential if a solution is to be found. If we have no need to move – we are, what Americans call, 'the only game in town' – then we have no pressing reason to negotiate. Movement on one issue can be traded for no move-

ment by ourselves on another, but the viability of this trade depends a great deal on how important it is for the other negotiator to secure movement on the issue upon which we are prepared to move. But movement there must be if two negotiators with different solutions to the same problem are to secure a deal.

Where signalling is a tentative hint at the possibility of movement, proposing is a tentative suggestion of what form that movement could take. Signalling slides into proposing. It has also been described as the bridge to a proposal.

For example, the signal: 'It would be **extremely difficult** for me to accept an **unlimited** consequential loss clause' could become a proposal along the lines of: 'If you were willing to limit my exposure to consequential loss by some form of liquidated damages clause, I would be willing to consider adjusting to your performance standard'. Whether the proposal, and what forms it takes, is presented after a signal or not would depend upon the other negotiator's reaction to the signal. It is not inconceivable that a proposal will be made after a signal has been ignored, though manifestly negotiating is more productive when the signal is followed by a signal question: 'Given that consequential loss clauses are part of our **standard** terms and conditions, how can I make it easier for you to accept them?'. This invites the negotiator to make a proposal.

You should be able to see why negotiators who choose to argue against statements – in this case the consequential loss clause – only muddy the waters because they force the other negotiator to defend consequential loss (which after all protects his company from a failure in performance by the supplier). It is much more productive to signal and propose or to question a signal and invite a proposal.

Why then does it matter what form the proposal takes? Surely a proposal, any proposal, is better than no proposal? True, in much the same way as when playing golf scoring par is better than scoring ten over, but scoring ten under is even better. Poor negotiators (those with high handicaps – even severe disabilities!) sometimes stumble from an argument to a proposal, which is better than stumbling from an argument to a deadlock, but by presenting the proposal incorrectly, by not being aware of the importance of language and order in the proposal phase, they still do badly (in terms of meeting their own interests) when they could do better.

Proposal behaviour appears from the start of the negotiations. Merely suggesting that you meet at your office, not his, is a proposal. 'Let's sit over there' is a proposal; 'I think we should discuss the agenda' is a proposal. 'We should adjourn until Tuesday to consider what each has said' is a proposal, and so is the statement 'We do not consider assignments valued at under £100 000 a year'. Each of these, and similar statements and suggestions, crop up all over the place during the debate phase of negotiation. You would be hard put not to propose anything in negotiation, because the mechanics of meeting, interacting, pointing the way, and stating your own position or aspirations, involve loose proposal language, which for the most part is quite harmless to your interests – indeed, it might even enhance them in so far as it helps the debate phase move forward – but which if carried on indiscriminately throughout the proposal phase can severely handicap your position.

It is the ability to shift from loose informal proposal language to tight formal and assertive proposal language that improves your performance. But this is easier said

than done. The very habit of loose language indulged in throughout the debate phase, where it does not present any threat to your interests, creates its own barrier to using formal language when it is needed. So many negotiators show no evidence of appreciating the distinction because it is not easy to shift gear from one situation to the other when the differences in the two situations are not easily identified.

Negotiators sometimes raise the objection that the shift from the looser language of proposing to more formal language is too risky because the change in language is noticeable and sounds almost aggressive. They do not want to appear to be aggressive (quite rightly) and they believe that any step down that road via assertive statements is to be avoided (quite wrongly). Lack of assertiveness leads directly to an unconvincing performance. If your proposal is meant to focus the attention of the other negotiator on a potential solution, it undermines your cause if the language of your proposal encourages the other negotiator to believe that you do not mean what you say, or that you have little confidence that your proposal will be accepted. Suspecting that you are ambivalent about what you want provokes the other negotiator to demand more from you – even when you are giving away the store because of your proposal language.

For example, negotiators often use very weak language to express their needs. They do this without thinking about it – we know because it often takes a video recording of their proposal language for them to realise that they actually are speaking in this way. Examples of non-assertive, and ultimately self-defeating, language take the form of:

'I wish…'
'I hope…'
'I would like…'
'It would be nice…'
'Could we…'
'Would this suit you…'

None of these forms would convince a negotiator that you were determined or committed to your views. There might be occasions and circumstances where you might find it useful to use such language (there are always exceptions to everything) but do not make the mistake of generalising from the exceptional to the particular. What might be appropriate in a minority of situations is not appropriate in most others. Far better that you adopt assertive language (said nicely and not arrogantly or aggressively). Examples include:

'I need…'
'I require…'
'We prefer…'
'We want…'
'It is necessary that…'
'We must insist…'
'If you do… then we could consider…'
'We will…'

A proposal is a tentative suggestion that builds on a signal sent or one received. It is not a final solution (that is the role of a bargain). The earlier in the negotiation you

are, the more tentative we expect proposals to be. We are exploring possible solutions, not putting forward final ones, and the less we know about the other negotiator's views the less certain are we about which proposals are likely to be worth exploring. Hence the extent to which we are tentative reflects the degree of our current prudence.

Tentativeness is its own protection. Saying 'We could **make it** four visits a week' is far more specific (and on its own very dangerous, if the number of visits was of crucial importance to them) than saying 'We could **look at** the number of visits'. In the first case, the response could be 'Fine. Now let's look at duration', leaving the proposer in trouble, because he got absolutely nothing back for his specific movement and because if he carries on like this he will be picked off, item by item, by the other negotiator who is no doubt warming to the task at the thought of such easy pickings. In the second case, the response could be: 'Fine, but how many visits could you make a week?', to which the negotiator can reply: 'That would depend on what we agree about duration, working hours and maintenance costs'.

Indeed, rather than wait (hope?) for the question 'how many visits', the negotiator could join his tentative suggestion or signal-proposal to his follow-on answers to the other negotiator's question, by proposing: 'If we can agree about duration, working hours and maintenance costs, I could look at the number of visits'. This is a better approach because it does not rely on the other negotiator's alertness to pick up your signal-proposal ('We could look at the number of visits'). Not all negotiators listen very clearly, nor does everybody see all that quickly the implication of those signals you send. It is not unusual for the other negotiator, deliberately or otherwise, to move on to another topic, leaving your signal-proposal high and dry.

Exercise 5B

Consider the construction of the proposal: 'If we can agree about duration, working hours and maintenance costs, we could look at the number of visits'. What do you immediately notice about it compared with the signal-proposal: 'We could **look at** the number of visits'?

Yes, it is longer. The additional words preface the offer to look at the number of visits. These words also immediately place a protective cordon round his proposal and signal that the number of visits is negotiable, i.e. that they are tradable for things he wants in exchange. This is the essence of proposal language – it enables you to indicate movement without the risk of being ambushed or the risk of encouraging greater intransigence. You move from debating issues to tentative suggestions about how the issues might be handled, while making clear that the decision arrived at will be by trading and exchange and not by a one-way street of concession-making by you.

Effective proposals consist of two parts: the **condition** and the **offer**. Ineffective proposals only consist of offers.

The language of a proposal is **always** tentative. Consider the proposal: 'If we can agree about duration, working hours and maintenance costs, we could look at the number of visits'. The condition requires the negotiators to 'agree' about some

issues but does not specify what that agreement should consist of; the offer is for the negotiator to 'look at' something but does not specify what the results of his looking will or must be. There is a deliberate vagueness about both the vague condition and the vague offer in this proposal. The proposer cannot be ambushed with an 'OK' 'from the other negotiator, because an 'OK' can only be a response that indicates a willingness to discuss the proposal and to explore the specific content of the vaguely presented condition and offer. If the other negotiator says 'No' to the whole proposal, then both negotiators go back to debate to see if there is some other way of solving the problem. By saying 'No', the other negotiator states his opposition to considering either or both of the condition and the offer. A useful first question in debate, assuming that the other negotiator offers no reasons for his rejection, would be to find out what he does not like about the proposal.

Proposals decrease in tentativeness as we approach the bargaining phase. For example, you could propose that a specific condition is met: 'If you accept that the maximum duration of a maintenance visit is to be set at two hours, then we could re-examine the number of visits per week'. The condition is specific, the offer is still vague (to 're-examine' something is a vague commitment). But whatever form the condition takes – specific or vague – the offer is **always vague**. This is summed up in Table 5.1.

Table 5.1 Components of a proposal

Condition	Offer
Vague/Specific	Vague

5.3 How to Make Proposals

Negotiators often ask whether it is better to make the first proposal or whether it is better to respond to the other negotiator's proposals. I know some negotiators who boast of their principled opposition to proposing first, which if it works for them is probably a fine idea, but what happens when they meet somebody who holds the same principle of always proposing second? They could be in for a long session!

Some negotiations almost impose on the negotiator the task of making the first proposal. In the clothing industry the new season's styles are determined long before the old styles are out of fashion – sometimes before the previous fashions have even reached the shops – and decisions about quantities and price are made long in advance. Get styling, quantity, quality and price right and you become very successful; get any of them wrong and you don't. Much of Europe's mass market merchandise comes from the Far East (Hong Kong, Korea, Philippines, Taiwan, Thailand) and is distributed through large and small retail chains.

Mr Li, a Hong Kong supplier, wanted to bring forward his delivery of the next season's men's coats by five months to May and wanted to be paid by the purchaser on despatch of the coats. Mr Li explained his reasons at the meeting, saying that he wanted to have his plant relocated and modernised during the time when he would normally be working on the coats (Septem-

ber–December) for the spring season. But whatever his reasons, Mr Li was in the position of having to make the first proposal. He wanted to change the status quo (delivery and payment in the autumn before the new season) and it was incumbent on him to propose something that would persuade the UK clothing retailers that they should agree to change something with which they were currently happy. Mr Li could not expect his customers to propose to him how the status quo should be changed. He had no choice but to propose first.

Negotiators wanting to change the status quo, by renegotiating a clause or even an entire agreement, do not have the luxury of moving second, and they risk irritating other negotiators if they persist in waiting for them to make the running.

It is in many ways an unhelpful approach to put too much into a single proposition about who should move, or avoid moving, first. If we perceive the process as one of debate and signals through which we move towards tentative solutions that do not commit the proposer, then who moves first becomes of less importance. We cannot endlessly go over the same ground with both stating their views but neither suggesting what might be possible. The purpose of proposals is to test the water – 'Is this line of thought productive? If it is, what are the likely costs in terms of the conditions that might be imposed?'.

The conditionality of the tentative proposal protects the proposer. Presumably the condition imposed as the entry price of benefiting from the offer is expected to be stiffer than the exit position of the proposer. By implication – it is, after all, a negotiation – your conditions are negotiable. And even if you price your offer too low in terms of your conditions, the vague nature of your offer leaves you some room for manoeuvre.

Perhaps a more important question than who proposes first is that of where should you open? A fear of being caught short with an underpriced offer is counterbalanced by a fear of going too far over the top and alienating the other negotiator (as discussed in Module 2). Advice to open 'realistically' leaves open the question of what is realistic. The best **guide** to being realistic is to consider the credibility of your case for a particular entry position. Is there a credible reason (i.e. credible to the other negotiator and not necessarily to an appeal court of experienced judges) for adopting that opening proposal? Again, the vague content of your proposal helps you. The first and early proposals are likely to be vague in both the condition and offer. It is not difficult to be credible with a degree of vagueness covering the detailed content of what is on offer. For example, to require them to think about the distribution coverage (your condition) in return for your considering the proportion of in-house transport facilities (the offer) is hardly open to a charge of non-credibility, whereas a proposal requiring them to cut their drivers' hours by 20 per cent from midnight tonight (your condition) in return for your **considering** the proportion of in-house transport facilities over the next six months might well be. It all comes down to balance and circumstance and this is helped by the vagueness (i.e. vague content) of your conditionality.

Negotiators can only make sensible proposals when all the issues are on the table. It makes little sense to make conditional proposals when you do not know enough

about the other negotiator's attitude towards, or his perceptions of, the issues to judge the price you could get (i.e. your conditions) for whatever it is you perceive they want (i.e. your offer). Proposals should emerge from debate (via signals) and by their nature – vagueness – cannot be settled without moving on to the bargaining phase.

How can we make an effective proposal? One thing that is always going for proposals is the fact, from observation, that people give them their attention, or try to until they are put off by the surrounding verbiage. To announce to a meeting that you have a proposal usually creates an expectation and a higher degree of attention than you will get from announcing that you disagree with what somebody has just said and then proceed to tell them what it is you disagree with. How long the attention lasts and whether the expectation is fulfilled is partly down to the way you present your proposal. The most common mistake negotiators make when presenting a proposal is to drown it in irrelevant verbiage by confusing the proposal and debate phases. In short they propose and explain their reasons for the proposal at the same time.

Proposals, like humour, gain from brevity. If the signal is more of a hint than a banner-sized headline, the proposal is more of a tactful message than a sledgehammer. Language, I say again, is all. The tone is significant. It has a purpose. You are trying to entice them into an area where you can do business with them on the basis that you get some of what you want and they (might) get some of what they want. The tentative, even tempting, nature of the proposal is summarised in its vague content:

'I could consider…'
'We could perhaps look at that.'
'It might be possible to do something.'
'We might be able to adjust in some way our terms.'
'Perhaps we could go over that area again.

The important message is carried in the vague but nevertheless conditional offer and to drown it in verbiage not only detracts from the hinted deal but also can have the effect of, perhaps wrongly, implying to the other negotiator that you are less than comfortable with your own position. Let us look at some scenarios to illustrate this point.

1. 'How much do you want for the vehicle?'
   'Well, my Uncle George who knows about cars – he worked with the AA or was it the RAC? – well he thinks this car is a real goer. It can do at least 90 miles to the gallon – I have no idea what that is in litres – the European Union and its regulations, would you believe it? – well taking all that into consideration, I would think it's worth at least £5000, perhaps more, considering the work I've had done. Look at that inside trim, real leather. Had it done only a month ago. Perfect match. And the stereo. Had it put in by Balfords – what they don't know about stereos you can forget about. I'm telling you there is no better supplier of stereos in Britain – never mind the Japanese – my uncle was on the Burma railroad. Cor Blimey,

when he went through. Makes me shiver every time I pass a Conda, which I do regularly in this 'ere car. So what do you think?'

I'd only offer £3500 purely on the strength of his prevarication.

2. 'Omega's position is quite clear. We do not accept liability for third-party damages.'

   'Ah, yes, but we are not asking you to accept total liability. What we are proposing is that you accept about 50 per cent of the damages, should they arise. After all, it was your computer that went down – don't they all? – and we were left with the mess. Even the catering staff went off, which is something I thought they left to their dishes (ha, ha), and we had a hell of a job getting the unloaders back to work – they had their meeting in the bar and I blame that shop steward of theirs – Cassidy I think, anyway he's Irish, though he pretends to be from Liverpool, God only knows why – he insisted on a free round of drinks while we tried to calm the nerves of the outraged baggage handlers, more like a mob I would say – whipped up, by that fellow Cassidy (we're checking to see if we can sack him on some technicality) – and it took ages for us to get the bar under control again – not that there was any threat to public safety of course…'

   I'd press for absolute recognition that we were not in any way liable.

3. 'We need a much higher licence fee.'

   'Well I suppose we could entertain some movement on the licence fee but only to get this venture going. I'm not all happy that we have to pay you $200 000 in advance for a project with a forecast income of $220 000 a year assuming everything goes all right. And what happens if we don't make the target? Who bails us out? That's what my shareholders will want to know, especially Zenith Insurance with their 14 per cent lurking in the background and ever ready to put in their own people as soon as I falter. I don't know whether it's worth it at all…'

   I'd want to avoid doing any business with these people except at the full $200 000 in advance.

These examples of the shambolic style of proposing are all too familiar across the negotiating table. The proposers waffle on, drowning their proposals in verbiage and disheartening the listeners, or worse, inspiring them to increase their demands on someone clearly unconvinced of the merits of his case. If only it were a rare occurrence. It is all too common.

To make an effective proposal, three main 'rules' should be practised:

1. It should be conditional.
2. It should be presented unadorned, without explanation.
3. On completing the proposal you should go silent (or, to be frank: shut up!).

A subsidiary rule is that it should be presented with the condition first, followed by the offer.

Exercise 5C

Consider what is wrong with the following proposals, noting down your thoughts before reading on.

1. 'I'll accept your proposal for landing and pick-up rights for ten flights a week into Singapore if you support our claim for landing rights in Germany.'
2. 'If we provide you with more bed nights a week, will you accept two persons to a room?'
3. 'If we accept an 8 per cent differential on the shift allowance, will you look at the manning levels?'
4. 'How about if we made it £2 million. Would that meet your client's needs?'
5. 'OK. I'll make an offer. If you accept changes in your vendor's contract, I'll agree to you becoming our sole supplier on our three sites.'
6. 'If you agree to clauses 6 and 7 as they stand, then I will reconsider our policy on third-party maintenance.'

The errors made in the proposals in Exercise 5C are discussed in detail below:

1. Two errors: first the offer is presented before the condition, which always weakens the impact on the listener (and, on the phone, could jeopardise the deal if the phone is cut off before you get to your conditions), and second, the offer is specific (ten flights a week) while the condition is vague, which is the wrong way round: conditions are specific or vague but offers are always vague. What is meant by 'support' a claim for landing rights – a letter to the European Commission? a delegation to the respective governments? a £2 million donation for legal costs? or what?
2. Two errors: first this is a question-proposal (it asks the other negotiator to judge the merits of the proposal) which does not put any pressure on the other negotiator to accept. Indeed, it could encourage him to be more demanding ('No way. We require single rooms'). Second, the offer is placed before the condition.
3. Three errors: first it is a question-proposal, which is always weaker than a statement-proposal; second, it puts the offer before the condition; third, it is specific in the offer but vague in the condition.
4. Four errors: first it is a question-proposal; second, it is a specific offer; third, it is unconditional; fourth, it only requires the other negotiator to declare whether or not the offer meets his client's needs, which places a lot of faith in his ability to resist temptation and say 'No it doesn't', and then wait and see if the answer provokes a further concession from you. (What has the other negotiator got to lose?)
5. Single error: the offer is specific while the condition is vague. (What changes in their contract would justify making them the sole supplier?)
6. No errors, assuming that the proposed trade-off is considered to be acceptable.

Exercise 5D

Recast each of the proposals in Exercise 5C into effective proposal language. Then check your answers against my suggestions in Appendix 2.

5.4 How to Receive a Proposal

'Our view is that we need some combination of a penalty clause and an…'

'Penalty clause? We're not interested in penalty clauses. There are enough penalties in this unprofitable contract as it is. No. You will have to find some other solution than that. What we want are incentives…'

Interrupting a negotiator is always risky. It can lead to an increase in tension and ultimately towards deadlock. Interrupting a proposal is doubly risky. To the risk of deadlock there is added the risk of missing out on an opportunity to hear what the other negotiator is proposing in total and not just on the topic that we feel strongest about.

By interrupting the first part of Jacques Duval's proposal – at the mention of penalty clauses – Antonio misses finding out what proposals Duval has (and even if he has them) on incentives. Indeed, there is a risk that Duval's irritation at Antonio's interruption on the issue that is important to Duval incites enough emotional reaction for Duval to stiffen his resolve on the incentive side by making it a tougher scheme than otherwise he might have. Not having heard what Duval would have said if he had been uninterrupted, Antonio has no way of knowing whether the incentive scheme he eventually hears is better or worse than the one he might have heard.

Some negotiators argue that interruption can also intimidate the other negotiator into making deeper concessions. This often appears to be a plausible reason for interrupting but it relies on the other negotiator succumbing to intimidation, which is a wholly unreliable assumption. And anyway, those intimidated today may not be tomorrow and it is a short-sighted business plan that sets out to intimidate one's business partners. I can only offer my own observation that negotiators tend by a large margin to react negatively to the bruising, bustling and intimidatory approach. In my experience it does not often pay off, and on the few occasions where it does, it achieves success over the other negotiator at the expense of their spending much resentful time working out how to get revenge. It is down that road that many an embattled relationship has led to a company's ruin, either with its own workforce or with its customers.

The nature of proposals as tentative suggestions, usually combining a condition, specific or vague, and an offer, always vague, suggests the appropriate way to respond.

Listen to a proposal in full, including any extended elaboration of it (however unwise it is for you to elaborate on your proposals, you cannot expect to hear everything in the tidier order advocated here). Do not interrupt, and wait for the proposer to conclude. Even a tactical touch of silence at the conclusion can help

you (yes: be silent for a few seconds) because experience shows that people making proposals sometimes add in extras, perhaps by way of clarification, when their proposal is met by a *little* silence. Silence also gives you an opportunity to think about, or appear to be thinking about, what you have heard.

Exercise 5E

Consider and note down how you would respond to the following proposals before reading on:

1. 'If you can improve your response times, we could look at training our staff in routine maintenance.'
2. 'If you improve your offer of £7060 for my Pomme Marcel HD, I might consider placing the loan with you.'
3. 'Can we settle this purchase this afternoon? If we can, I could discuss with you bundling in some training for your operators.'

Possible responses would be as follows:

1.
   (a) 'By how much would we have to improve our response times?' or:
   (b) 'How many staff would you make available for routine maintenance?'
2.
   (a) 'By how much must I improve on the trade-in price for the HD?' or:
   (b) 'On what terms would you take the loan from me?'
3.
   (a) 'What sort of training did you have in mind?' or:
   (b) 'When you say "bundling in", do you mean at no charge?' or:
   (c) 'Does that mean we can also settle the training this afternoon?'

What is the common feature of these responses? They are all questions. They seek to clarify what the proposer means, they try to tempt him into being more specific, to give content to his vague offers, and they ensure that the listener understands what is being proposed.

You should not give an immediate negative response to a proposal, no matter how little the proposal interests you. It is much better that you fully understand what is on offer or in the minds of the proposers (their thinking betrays clues as to their priorities), than it is to leap right back into an argument. Questions are in the constructive part of the debate phase and not only provide you with, perhaps, vital information but also demonstrate to the proposer that you are taking their constructive suggestions seriously, at least to the point of considering them on their merits. If they have no merits your questions will soon confirm that.

Consider what some potential answers to your questions tell you, and what you can do next:

1 (a) 'By how much would we have to improve our response times?'
'We would be looking for a three-hour call-out.'

You now know their entry point on response times. Barring unusual circumstances it is unlikely to get worse for you. Depending on your own circumstances (perhaps three hours is too short, or perhaps you can better it) you can be non-committal in your response: 'I see. Well we would have to look at that in the context of the other details we must discuss with you'; or, you could link this issue to another one: 'To get anywhere near three hours, we would need to look closely at the incentive package to justify the high costs this would impose'.

1 (b) 'How many staff would you make available for routine maintenance?'
'Probably one from each shift.'

Again you now know his entry point and again your business knowledge determines your response. If one person a shift is feasible for you (i.e. it is inside your settlement range) you can note this, but be non-committal (for why, see below), or you can link it to another issue: 'One per shift is not enough to stop expensive call-outs for trivial repairs. However, if you are prepared to pay for three persons per shift to be trained we might be able to find a way of really denting the call-out charges'. (They might respond with a proposal to share the training costs, cut the number to two people, or ask a question about your vague offer on 'really denting the call-out charges'.)

2 (a) 'By how much must I improve on the trade-in price for the HD?'
'I need at least £7600.'

This is his entry price on the trade-in. If this is more than your exit price you will want to see him coming down to the settlement range (perhaps by trading something somewhere else); if it is less than your exit price, you know you have a potential settlement on the trade-in and you can move onto other issues. You can link a possibility of improving your entry offer on the trade-in with a condition that he places the whole loan with you at 4.25 points over base. In response, he might try to pull down that interest rate to at least 3 points over base.

2 (b) 'On what terms would you take the loan from me?'
'2.75 points over base.'

This is below your exit point but, as it is his entry price, you know there should be a better (for you) exit price from him. You can respond to suit your judgement, either with a non-committal acknowledgement of his proposal or with a linked response of your own to another issue.

3 (a) 'What sort of training did you have in mind?'
'Basic and introductory.'

If this meets your needs, you might consider pressing, now or later, for more advanced training to be bundled in, as generally an opening offer is his entry not his

exit position. Clearly, if he can get a settlement that afternoon for his entry price on training, he is going to be quite happy, and if you were not expecting to get anything on training and you were able to settle that afternoon, then you too would be happy. Your question has elicited the useful information that a deal is possible.

3 (b) 'When you say "bundling in", do you mean at no charge?'

'Yes'; or

'No charge for the training but you will have to pay for your own people's travel and accommodation.'

If the answer is 'yes' you have clarified his intentions. The second sort of response warns you of the below-the-line costs (travel and accommodation) associated with otherwise free training. You need this sort of information before responding with your own conditional proposal (he trains your people on site at his expense?).

3 (c) 'Does that mean we can also settle the training this afternoon?'

'Yes'; or

'I think that might take a little longer as we do not know who is available for this sort of training or when it can take place.'

Again the 'yes' clarifies his intentions. The second response might send some red light warning signals which require your attention in your own conditional proposals. Perhaps you could respond with: 'I would need to have details of your commitments to the training by this afternoon if I am to consider making a commitment to go ahead'.

Questioning to clarify, or to invite an extension of a proposal, is the most effective response you can make. All other reactions break up the momentum towards a settlement and can set back the debate phase – even into deadlock – for little gain. Proposals appear at every moment in a negotiation – some are purely administrative ('Let's have a break'), others are more contentious ('Let's deal with that later') – but as we can only negotiate proposals, it is essential to encourage negotiators to make them and for you to respond to them in a constructive way. Much of what you do in response to a proposal will signal to the other side how they should behave. If you say 'NO!', 'No way!', 'Do you think I am mad enough to accept that?' and such like, you cannot expect them to be less than decisive in their rejection, or interruption, of your carefully thought out proposal.

Instant rejection is a less successful strategy than its prevalence in negotiating would suggest. He may only be testing the water by presenting a rather extreme (to you) solution and you should be more relaxed about him exercising his rights to do so. Some people do not like change, and proposals that require change are often rejected out of hand without explanation (usually from the fact that the listener has not thought about that sort of solution but does not want to admit to it), or he rejects it off the top of his head with a rapid fire set of ten reasons why what is suggested would never work, won't work and can't be accepted even if it did work.

A proposal rejected out of hand usually changes the negotiation to argument. People do not like their suggestions dismissed instantly, and certainly not when it is done curtly, or worse. They like to think that their suggestions at least merit consideration, if only as a sign of respect for them as joint decision-makers in this negotiation.

What is the most effective way of responding to a proposal? First, clarify what is meant by the proposal by questioning its condition or its offer. If there is only a condition – a not uncommon experience in negotiating – you can ask the obvious question: 'If I were to consider what you have requested, how would I benefit from that/what would I get in return?'.

Second, consider what the proposer is telling you about the scope for a deal on the issues he has raised. If there are other issues under discussion be non-committal (by verbal devices illustrated above) and seek proposals on these issues. Asking: 'What about these other issues?' is one effective way of shifting attention to the other issues. If the other negotiator wants a decision on the issue he has raised and not on the others until that is settled, you need not have a fight about this. The principle that 'nothing is finally agreed until everything is finally agreed' is one that you would always want to establish and maintain throughout any negotiation. You do this by reminding the other negotiator at appropriate moments – and this is a typical one – that while you are prepared to examine proposals on a single issue in isolation and also you are prepared to indicate what you can agree to, no final agreement can be reached until you have examined everything under discussion. Hence, if he insists on settling a single issue, or a minority of the issues you are negotiating, before moving on, you simply state that your agreement – if one can be reached – is provisional and its implementation is subject to final agreement on the other issues.

Tell the other negotiator what aspects of his proposal you like and don't like. You might want to make statements about them (you are in debate when you do this, so apply all the sensible points that are effective in debate: statements, assurances, questions, summaries and signals (SAQSS)). It might be that the act of doing this alone encourages the other negotiator to respond with useful amendments to his proposal. That certainly moves things forward. He might also respond with comments on your comments (debate). You can handle these effectively using SAQSS.

Finally, you are ready to respond with your own alternative proposal. If you are in the proposal phase you are in negotiation proper – you cannot negotiate a debate – and handling this phase as a prelude to the bargaining phase requires an ability to manage movement on several issues at the same time.

5.5 Summarising Tradables

We trade because we value things differently and the things we trade are **tradables** (see Module 3). In pre-negotiation, the preparation phase, we made estimates of the valuation that the other negotiator might have placed on the tradables by categorising them as of high, medium or low importance. In the debate phase we discovered a lot about the other negotiator's thinking on all the issues each of us has raised.

From his proposals, and his comments on ours, we have gained an insight into his potential solutions and their match with ours. We work on the principle that what he values, he trades dearly for, and whatever he asks for, he values, and from this interaction we accept that some of the assumptions or valuations we made in preparation will need to be amended or modified. True, we might also have been misled by our interpretations of his remarks and he might also be deliberately misleading us in respect of his wants. There is no way we can see into his head – nor he into ours – so we have to work on what we know (or think we know).

Most business negotiations cover a number of issues rather than merely one. Given that most negotiations are a rather untidy interaction – no pre-written scripts that each side could or would adhere to – the emergence of tentative proposals on each negotiable tradable is not synchronised either chronologically or even logically. They will emerge throughout the debate phase.

Some negotiations are slightly less anarchistic in that the negotiators are working on a single text, such as a contract or a list of items (for example, the typical trade union's 'shopping list') placed on the agenda by one or both sides. The negotiators might work their way through each item in order. This has the attraction of being orderly; it also has the risk of weakening the negotiator's ability to trade across the tradables. He is often reduced to negotiating within each tradable's settlement range distinct and separate from other tradables. If their exit points overlap, they have the possibility of making an agreement, though not an ideal one if the tradable is less important to one negotiator than it is to another, and they are prompted to give way where, in other circumstances, they could trade movement for reciprocal advantage on something that they value more highly. You should be wary of pursuing tidiness in negotiating at the cost of narrowing your options. This orderly mind 'for its own sake' approach is often practised by solicitors and can lead to poorer deals, particularly where one side is pressed for time and the other is not (and meanwhile no matter how long it takes it costs both clients their solicitors' professional fees).

If, therefore, we choose to work in the more chaotic or disorderly atmosphere of the normal negotiation, we need a method of simultaneously handling several tradables together in the proposal and the bargaining phases. The device is interesting because, like signalling, it acts as a bridge from one phase to the other, in this case from proposing to bargaining. Negotiators summarise each other's current proposals for the negotiable tradables and compare each other's conditional offers. Looking down, or listening to, the summarised list you can see what is on offer (in regular negotiations over the same tradables many negotiators can keep the details in their heads without recourse to a written list, though never be too proud to make notes – **as long as you watch where you leave or keep them**). The list is an indicator of how big the gaps are on the tradables, or whether there are overlaps with your exit point for any of the currently mentioned tradables (there may be other potential tradables which you have not yet raised and for which, obviously, you have no information on exit or entry points).

It is amazingly simple to summarise as a means of keeping track of what is going on, yet negotiators constantly make life much more difficult for themselves by ignoring the simple things (and then make a bigger mess of the complex things). In

debate we summarise what people have said to each other; in proposing we summarise what each has proposed. The summary introduces an element of order into our interactive chaos. It also sets up the bargaining phase. It creates the possibility of either negotiator moving from tentative conditional proposals (i.e. conditional vague offers) to the bargain (i.e. conditional specific offers).

Consider Mustafa and Bertrand and their negotiation over the upgraded Pomme Marcel IIx. Mustafa's summary might follow this pattern:

'I do not know whether I can accept that offer, nor whether your problem with carrying too much stock is something I can do anything about. However, let me summarise what we have covered so far. You are prepared to reduce the price of the Pomme Marcel IIx and improve the trade-in allowance for my Pomme Marcel HD…'

'Only if we can agree on the loan you require and the borrowing rate.'

'I was just coming to that. You have also offered to train one of my people in the upgraded systems and permit my staff to hot-line you for advice for a nominal charge. I have to accept your standard maintenance charge of 8 per cent of the current purchase value for three years, but you will provide me with some free software for my accounts processing and allow six months' warranty. The best you can do on delivery is within 30 days of placing the order.'

Bertrand has the opportunity to correct errors in Mustafa's summary and to elaborate on any item, perhaps hinting at further movement. Both negotiators will wait to see if the other moves. They could swing right back into debate (with its attendant risks), particularly if the gaps are too wide. This depends a great deal on whether they feel that the other has taken account of their inhibitions, as revealed in earlier debates, and which they signalled for attention. The negotiation is at a critical stage. Either it goes back to the debate phase (and, hopefully, to new signals and new proposals) or it goes forward to the bargaining phase. Timing the latter is important. An attempt to enter the bargaining phase too early is an attempt (almost pre-emptive) to close the deal. If the current proposals in no way address important matters of concern to the other negotiator he is not going to respond positively to a closing bargain.

The summary of the current proposals either invites new proposals or a bargain. If central inhibitions have not yet been addressed, then new proposals are required. You are as well to summarise after each proposal and to include the previous proposals in each summary in order to manage the untidiness (and your proneness to error).

Epilogue

Negotiators thrive on handling proposals. Because we cannot negotiate debates or arguments we are not making progress in the negotiations until we get to proposals. They are best encouraged rather than discouraged. An indicated willingness to listen to a proposal, even one that you disagree with, is positive negotiating behaviour. Like a poor argument, a poor proposal wilts sooner under open questioning than it does when under fire.

'I can see why early delivery and early payment meet your requirements and would help with your relocation and modernisation. What I fail to see at present, Mr Li, is what this does for me.'

'What it does for you is it enables me to move into a modern plant that will mean better quality coats, more speedy delivery, and a cost containment which will improve your margins despite inflation.'

'Sure, Mr Li, but none of that helps me this year. I need you to tell me what benefits it has for me this year.'

'Well, er, that is taking rather a narrow view of the future…'

Either Mr Li comes up with a proposal that meets some of your interests – a larger discount on this year's price, a contribution to storage costs, a refund of interest rate costs on the early payment, some form of guarantee on the disposal of unsold stocks at the end of the season, and some premium for changing the perfectly good arrangement that you had previously – or Mr Li is not going to get anything near what he wants. It is not, however, a one-way street. Mr Li does have a point about the future benefits and does have a case for some accommodation by yourself. For you to resist his proposals unreasonably, i.e. beyond the point where your legitimate interests were affected, could be self-defeating. If he is not accommodated in any way – and not necessarily in the way the other negotiator first proposes (that, after all, is only his entry position) – you face the prospect of a visit to Hong Kong to arrange new suppliers and new prices, with no certainty that you can get a better deal for both the short and the longer term than the one you could negotiate with Mr Li in your office.

The most effective proposals consist of both a condition and an offer and your response to them should always be to clarify and understand what the proposal means. In reality this will be less tidy than the model suggests. Some proposals will consist of an offer only – demand that you do something for nothing – and some will consist of a condition only – a unilateral concession. In the first case you must question the condition (presumably the condition is onerous, or, if not, as it is an early proposal is there some more leeway in it?) and question the missing offer: 'What do I get if I consider (NB: **not** agree to!) your proposal?'. In the second case you are faced with a unilateral offer and you may choose to accept it without fuss – free gifts do not have to be negotiated – or to note it as the boundary beyond which he might move at a later stage.

In the proposal phase, which emerges from various points in the debate phase, there will be a lot of untidy ends sticking up all over the place reflecting the tentative nature of the proposals. Each one might represent a tentative proposal from each of you. Regular summarising of the proposals, whether they have been agreed or not (you can present your alternatives within your summary), keeps the focus on what each thinks is a solution of the negotiation. Either this provokes new tentative proposals, or it sets you up for the final bargain, the explicit conditional offer that invites the closing agreement.

Review Questions

Answer the following self-assessment questions on a separate sheet of paper before checking with the solutions given in Appendix 2 at the end of the book.

5.1 Your terms and conditions include a protection against consequential loss and the other negotiator has signalled his unwillingness to accept this. Do you:

i. Ask him to explain his objections to consequential loss?
ii. Defend the necessity of your business having a consequential loss provision?
iii. Ask for a proposal on how he intends to cover your need for protection against a failure of performance?
iv. Tell him that a failure to sign a consequential loss provision means that no business can be concluded with him?

5.2 Any proposal is better than no proposal. True or false?

5.3 An unconditional proposal is better than no proposal. True or false?

5.4 A conditional proposal is better than an unconditional proposal. True or false?

5.5 An unconditional assertive proposal is better than a conditional unassertive proposal. True or false?

5.6 Which of the following is correct? Proposals should be:

A. Short.
B. Unexplained.
C. Conditional.
D. Relevant.

5.7 Which two answers are correct? A proposal is:

A. Specific in the condition and specific in the offer.
B. Vague in the condition and specific in the offer.
C. Vague in the condition and vague in the offer.
D. Specific in the condition and vague in the offer.

5.8 Which of the following is correct? A negotiator wishing to change the status quo should:

A. Avoid proposing a change and wait for the other negotiator to propose a change.
B. Propose a change and not wait for the other negotiator to propose.
C. Avoid proposing a change until the other negotiator asks for a proposal.
D. Propose a change only if the other negotiator signals a willingness to change.

5.9 How would you respond to the following statements?

i. 'Given your insistence on a penalty clause, we require a premium for performance.'
ii. 'How do you expect my people to agree to the new shift times without some compensation for unsocial hours?'
iii. 'If you agree to a higher advance payment, I would offer you a better deal on payment terms.'
iv. 'If you drop your claim for out of hours payments, I would consider an *ex gratia* payment.'

5.10 The other negotiator makes a proposal with which you are in total disagreement. Do you:

A. Say 'No'?
B. Stop negotiating?
C. Ask for an explanation?
D. Counter-propose?

5.11 Which of the following is correct? When dealing with a number of issues in a negotiation it is better to:

A. Insist on them being linked together.
B. Judge them as separate issues on their own merits.
C. Decide upon nothing in finality until agreement is reached on all of them.
D. Be tidy in your approach to difficult issues.

Module 6

Bargaining for an Agreement

Contents

Prologue

6.1 Introduction

What do the following have in common?

1. You are in a supermarket. You take a bottle of cooking oil to the check-out. The clerk scans the bar code and the price rings up on the till.
2. You open your mail. One of the letters is a price quotation from a plumber for clearing and reconstructing the drains to your house.
3. You are in your office. A computer salesperson has just handed you for signature a printed copy of his company's contract for supplying, installing and maintaining a local area network for all your computer systems.
4. You are in negotiation. The union official says: 'If you make it 3 per cent, I will call off the strike right now'.
5. You are a diplomat. The intermediary says: 'I am authorised to say that if your government goes on record in condemnation of these hostile and unjustified attacks on human rights in the People's Democratic Republic of Ogoland, then my government will arrange for the release of your two citizens, held in protective custody by our compatriots in the capital, by Monday of next week'.
6. You are a parent. Your son says to you: 'If you take me to the match this afternoon, I will clean your car'.

Answer: they are all bargains.

Now, to say they are bargains is not a comment on the merits of what is offered, though that is one common meaning of the word bargain – some kind of exceptional benefit, suggesting good value for the price. By bargain negotiators mean something different. We mean that the statement contains an explicit and conditional offer.

The bargain offered by the supermarket takes the form of an explicit conditional offer: if you pay to the check-out person the price of the bottle of cooking oil, then you can take the bottle of cooking oil out of the store. Otherwise it stays here. If you say 'Yes' to the bargain, the contract between you and the supermarket is concluded; if you say 'No', it is either because you disagree with the price (the condition), or you disagree with what you get for it (the offer).

The plumber's quotation takes the form of a bargain: if you meet his price and terms (percentage cash deposit with acceptance of the quotation and payment of the balance on completion of the work), then he will undertake the work detailed in the quotation, including the removal from the site of all rubbish, and the making good of the trenches he digs across your lawn. If you say 'Yes', the contract is made, you pay him the deposit and he starts the work (you hope!); if you say 'No', because you disagree with the price or the terms (the condition), you do without the work (the offer) or find another plumber.

The computer vendor's contract takes the form of a bargain: if you say 'Yes' and sign it, you and the computer firm are bound by its contents – the conditions, which you meet, and the offer, which they meet (though as it is their written contract it is more likely to bind you more tightly than it is them – the proverbial small print); if you say 'No' you do without the local area network, or find another computer company.

The union official is offering you a bargain: meet my terms of 3 per cent (the condition) and I will call off the strike (the offer); otherwise, by implication, the strike will continue. Whether you accept his bargain or not will depend on your assessment of the credibility of his implied threat (his ability to continue or stop the strike) and your assessment of the efficacy of meeting the 3 per cent claim.

The intermediary is offering you a bargain: accept his conditions (agreeing to lie about the human rights record of his government), and he will carry out his offer and the kidnappers of your citizens will release their hostages. This example shows that there is no implication in negotiation that a bargain is necessarily good value or not. It is a verbal device that offers a deal. Whether the deal is worth taking or not, whether it is morally appropriate, is another matter.

Your son is illustrating the keen sense of bargaining that appears early on in children (and then, for various reasons, tends to be curtailed by the time they become adults). Meet his condition, attendance at the match, and he will wash your car (the offer). Has he pitched it high enough? Does attendance at a match with your son have less disutility for you than your staying home and washing your own car? Or were you planning to take him to the match anyway and his bargain gives you something back, virtually, for nothing?

These are examples of bargaining, and this module is about the role of bargaining, the form and content of bargaining language, and how to make the most effective use of the bargaining phase.

Dialogue

6.2 From Proposals to Bargaining

A proposal is not a bargain. A proposal is a tentative solution. A bargain is a specific conclusion. The distinction is more than pedantic. In negotiation, language is everything and the language of proposing is critically different in one crucial respect from that of bargaining. In a proposal the conditional offer is non-specific; in the bargain the conditional offer is *always* specific. This is summarised in Figure 6.1.

	Proposal	Bargain
Condition	Non-specific or specific	Always specific
Offer	Always non-specific	Always specific

Figure 6.1 Distinction between proposals and bargains

A bargain is always a specific condition attached to a specific offer. There is no room for ambiguity. There is nothing tentative about a bargain. It states precisely what you get for what you give. The specific condition is the price tag of the specific offer. If you say 'Yes', you have a deal; if you say 'No', you don't; if you say 'Maybe' you are close but not quite there yet. You choose to stay in the bargaining phase and move to a close, or return to the debate phase, because the offered bargain does not suit you. Staying in the bargaining phase by offering an alternative or amended bargain might lead quickly to agreement; returning to the debate phase might put you further back – though it may be important for you to take that risk if the circumstances dictate it.

The two essential ingredients of effective bargaining are: all bargains are explicitly conditional and all offers are explicit. In terms of preferred language, the format that is recommended is to use the key words 'if' and 'then':

If you do such and such, **then** I will do so and so.

When you hear any explicit formulation similar to 'if – then' you know that they have entered the bargaining phase; if you use the explicit format of 'if – then' you have entered the bargaining phase. Where the negotiations go from here is determined by circumstance.

In the supermarket, the bargain is made explicit by price scanning the products with a hand-scanner or the one at the check-out. You decide whether to buy or not to buy at the instant that you see the product's price. If you agree with the bargain you pay the price and take the product from the check-out; if you don't agree you leave it in the store. You could ask here: 'What else am I supposed to do? Take it to the check-out and haggle?'. You would be most unusual if you took several items to the check-out and tried to bargain with the assistants. They neither are trained nor have the authority to haggle with you ('If you take 10 per cent off, I will take two bottles of cooking oil instead of one'). The reason is almost obvious. Supermarkets

have a pretty good idea of how many of any item in their product lists they can sell at their set prices in a shopping day. If they get it wildly wrong over the medium term they go out of business, while almost minute by minute they can see at a glance along their shelves if their products are selling at their stated prices or not, and modern Electronic Point of Sale (EPOS) systems enable them to make these judgements, or to have them made by computerised expert programs, at the push of a button in the manager's office. Your offer to bargain would cut across their preferred way of conducting their business. If you do not want to accept their 'take-it-or-leave-it' bargain – the price tag on the product list – that is fine by them. Just leave the product on the shelf and leave the store. Out of the next wave of customers coming through the store, some – enough – will buy at the listed prices. Your offers to purchase in a busy day are not significant enough for them to go to the trouble and the expense of setting up arrangements to haggle with you. Your attempt to bargain would be of no interest to them.

The fact of annual – or more regular – 'sales' does not challenge this assertion. These are corrective devices under controlled conditions to maintain volume sales throughout the year. The annual – or quarterly – sale is at the stores' discretion. Some stores are in a permanent state of 'sales'; for a minority of others it is an unusual event. Even at the sale the sale price is still on a tag with the same implied 'take-it-or-leave-it' conditions. Only in so-called fire sales, and closing-down sales, is the customer invited to make offers to bargain.

The supermarket, and most businesses in retail, know their margins and their markets sufficiently well to set take-it-or-leave-it bargains. Their decisions on price are confirmed every minute of every shopping day. Only when we move out to the high value sale, or the industrial sale, does the element of uncertainty creep in and provide the basis for a negotiation. The price of a building that has been on the market only twice in 50 years is not as certain as the daily tested price of a bottle of cooking oil in a supermarket chain. The building's advertised price is a best estimate that may or may not be justified when real buyers meet real sellers in the market. The offered bargain may not be put together by the negotiator until several rounds of debate; the demanded bargain in the selling particulars forms the basis of a negotiation rather than an ultimatum (unless the buyers, for their own reasons, decide to 'give in' and take the offered bargain without further ado).

Moving from these fixed price bargains to the previously undefined bargain of the normal negotiation, we can see the similarities and dissimilarities of the effective bargain arising out of the proposal phase. First, the language is analogous – if you agree to this explicit and specific condition, then I will agree to this explicit and specific offer. Second, so is the choice: a 'Yes' means agreement; a 'No' means continue the debate or deadlock. The difference is that neither negotiator is able, nor likely, to fall back on a 'take-it-or-leave-it' stance. They are in negotiation not on a shopping trip. Both have options (other plumbers, other computer suppliers, other customers), the existence of which gives them an incentive to negotiate a deal; and where they don't have options, they have an even more pressing incentive to negotiate a deal. For example, we do not normally change our children to suit our domestic arrangements (though we might, in certain extreme circumstances, disavow them when they are old enough to fend for themselves), nor do we

normally swap employees because they are on strike (though we might if the dispute is long and bitter enough).

A negotiator cannot sensibly say 'Yes' to a tentative proposal and leave it at that because there is still some work to do in unravelling what is meant by, or implied by, or hinted at, in the non-specific attribute of the offer (and perhaps the condition) before an agreement can be made. The effective bargain stretches the proposal to a conclusion. It strips the proposal of its tentativeness. It makes it specific. It is a proposal that the other negotiator can say 'Yes' to and, by doing so, end the negotiation in agreement.

Consider the following scenario.

Mr Quinlan, his wife Mary, and their two guests, entered the Italian restaurant on time at 8 p.m. The owner welcomed them and apologised for the fact that their table was not yet ready as the previous diners were running late, having just got through the main course. He estimated that it would take about 15 to 20 minutes for them to have their table ready. Mr Quinlan, a project engineer, knew that an estimate of '15 to 20 minutes' always meant 20 minutes plus and that the 15 minutes mentioned was to make the delay sound shorter (did not his suppliers always promise 6 to 8 weeks when they meant 8 or 10?). He was less than pleased with this eventuality – it was his wife's birthday and he had been away for a month in the Gobi desert troubleshooting the building of a desalination plant which was three months behind schedule.

Mr Quinlan remonstrated with the owner and manager about the incompetence that had caused his party to be held up – 'What is the point of reserving a table if it is not reserved when you get here?' – and within a short while he and the owner were having a public row. Unable to get what he wanted – access to his table immediately – he led his party out of the restaurant, vowing never to return.

That Mr Quinlan had a complaint, even a grievance, is beyond doubt. Whether he handled the situation effectively is open to question. By now you are well aware that arguing does not get you what you want – you cannot negotiate an argument – which is all that Mr Quinlan had to offer. If, instead of offering an argument, he had offered a practical remedy for his and the owner's problem – demanding that they throw out the slow diners is neither practical nor a remedy – both he and the owner might have been able to find a way to remain on businesslike terms.

I do not know why the owner did not propose a discount off the meal that Mr Quinlan and his party would consume in due course: 'If you will have a little patience and wait for a while, I will knock something off the bill for the evening'. This would have been a practical remedy, and if it was what Mr Quinlan would have settled for, he could only *hope* that the restaurant manager would have made the offer if he did not take the initiative and make the proposal himself. Even at this stage such a proposal would still be just a tentative solution: how much would be taken off the bill? for how long must I wait? If Mr Quinlan wanted to make sure that a discount was considered, and that it was for a specific amount, he could have proposed it himself: 'I am disappointed that we have to wait. However, if you were

to agree to a 25 per cent discount for the meal this evening, I am prepared to wait'. This is a bargain. The owner may or may not respond positively – he might just do so for peace – but the focus of the debate between him and Mr Quinlan would have shifted from placing blame towards what should be done about the situation.

A bargain then is a specific remedy. It should be proposed as the final solution to whatever the negotiators perceive to be the issue. Where time or circumstances do not permit an informative debate and the exchange of tentative proposals that identify what might be tradable, going straight to a bargain can be a stab in the dark. If the bargain is much too unrealistic for other negotiators to consider seriously, damage might be done which time and circumstance prohibit putting right. In this situation, a more modest self-denying bargain is more likely to be proposed. Instead of the ambitious target of a 25 per cent discount off the meal, Mr Quinlan might have plumped for the lesser remedy of a free bottle of Chianti, or perhaps a single round of drinks, for himself and his guests at the restaurant bar while they waited to take their seats.

Negotiation permits each to weigh up and assess what could be the content of the likely bargain that could finalise the deal. Hence, bargains tend to be offered near the close of a negotiation, unless the negotiation is about a formal offered bargain – a contract for example – presented at the start of the meeting. This does not alter the role of the bargaining phase, which is to finalise the potential agreement on the basis of what has been said in debate and what proposals have been put forward. Many bargains may be offered by either negotiator, including the formal written one that started the meeting, but this does not mean that any of them are acceptable. The offering of a bargain is not the end of the matter – the offered bargains themselves are subject to the same process of consideration, i.e. debate, propose and bargain – but the difference with other phases in negotiation lies in the fact that when we are negotiating bargains we are generally closer to a conclusion than when we are making opening statements in the initial debate phase.

6.3 Linked Trading

If we negotiate because we value things differently, it is in the bargaining phase that we focus on the differing valuations. Nothing, absolutely nothing, should be given away, no matter how little it is worth to you. The paradox of bargaining is that those things that are worth little, or less, to you in themselves, could be worth a great deal to you in the bargaining phase if they are worth more to the other negotiators. The form of the bargain is the conditional offer, and the tradables available to the negotiators are the potential content of the conditional offers.

A local council authority owns a ten-acre derelict site close to a main road and within driving distance of 300 000 potential consumers, whose combined spending power is in excess of £500 million per year. The council has zoned the site for light industrial use (until two years previously, it had been occupied by an engineering plant that went into liquidation, with 600 redundancies). A property development company approached the council in an attempt to persuade it to re-zone the site for retail units. The council has

publicly stated that it is opposed to re-zoning because it still hopes to attract industrial employment into the district.

Several meetings were held between the council planning officials and the developer's agents, and while some progress has been made, there is still a reluctance to re-zone. The question of employment has featured constantly in the discussions. For the council this is its major interest; for the developer, employment is strictly related to the commercial criteria of a successful development. The developer has pointed out that by letting the development go ahead, the council will gain a business rate income of £90 000 a year, plus a rental of £140 000 per year (based on £6 per square foot on 6.5 acres of buildings), where at present it is earning nothing from the empty site. As an alternative to a five × five year lease, with upward-only rent reviews, they offered to buy the site from the council for £2.5 million, but only if it were re-zoned.

The developer's approach to the final meeting was to consider whether to increase their rental or purchase offer, in the knowledge that they could probably achieve a rental of £9 per square foot from tenants in the first five years, followed by upward-only reviews every five years throughout the terms of the lease. In return for this increase they wanted the council to grant them a 99-year lease instead of the original 25 years, enabling them to have the option to sell the unused portion of the lease at some point in the future. However, this still did not address the council's inhibition about jobs, particularly for those redundant engineers remaining unemployed after two years, and whose plight remained a sensitive issue in local politics and within the ruling party.

At the meeting, the developer's agent made the following proposal: 'On rental income, we are willing to increase the amount from £6 to £7.50 a square foot on a FRI basis, provided you make it a 99-year lease for the site, with seven-yearly rent reviews.'

'What about employment targets?'

'I think we should settle the financial aspects first and then go on to discuss the other issues.'

Developers, who think in terms of financial yields, are not always sensitive to the non-financial considerations of non-developers. Council officials, professional though they are normally shown to be, are under different organisational pressures which reflect, broadly, the values of the elected officials of the council. The developer, correctly, wanted something back for improving on the rent by 25 per cent; incorrectly, they tried to separate this issue out from the whole deal, which for them centred on the high priority of having the land re-zoned (unless that happened, nothing else was possible). They also had neglected to address their bargain to the inhibitions of the other negotiators, thus making it more difficult for them to agree to what was proposed.

Tradables widen the focus of a negotiation; the more tradables, the easier it is to avoid deadlock.

Exercise 6A

How many tradables were there in the developer's bargain?

The developer has some leeway to negotiate between these tradables. It can come down on the length of the lease, the intervals between the rent reviews and accept the 'upward-only formula' for reviews. It can also slightly increase the money. So in one sense the developer is correctly using tradables to arrive at an agreement, though note that the only way they are likely to move is towards improving their offer from the council's point of view – thus worsening it from their own. By using the bargaining language of 'if-then', the developer could hope to mitigate movement on the tradables that merely worsened their position, while finding out the limits to which the council would push on the financials. If the developer slipped into unconditional bargains ('OK, if we move on the rent reviews, will that satisfy you?'; 'How about if we made it £8.15 a square foot?', and so on) they would stride, alone, along a one-way street towards giving in.

True, they could box and cox between the tradables they have – conditionally moving on the rent for a longer interval between reviews, or for the council's dropping any demand it might entertain in respect of the upward-only provision. It could be that the developer could hold the ground here but only if the council were less than serious about the employment issue. In the actual case of this negotiation, this was not the situation. The local mayor was one of the redundant engineers still without a full-time job and he had little prospects of getting one. This personalised the employment issue and made the negotiations more complex (and never underestimate how details like this can make a straightforward commercial deal more difficult). The developer's point that the site with retail units on it would bring hundreds of construction jobs to erect it and about 300 permanent jobs afterwards (half of them part-time) did not carry much weight with the elected councillors.

To break through the impasse and to avoid being milked on the financial details, the developer had to address the unemployment issues head-on. It was no good throwing money at the problem, particularly when money was not the problem. A solution was found by extending the negotiable tradables. The retail units for the site took the form of a central six-acre shopping mall around which there was to be a car-park, plus a small petrol station and some office space. By taking the rear strip of the site and designing low-cost small business units for it, the developer was able to offer the council a feasible, though modest, contribution to the issue of local light industrial employment. From the planning officials' view this was a distinct planning gain, as the original plans had merely landscaped this strip which was an eyesore of debris from the old factory, including a rusting rail-siding. The developer's bargain thus became in its (almost) final form:

'If the council re-zones the site for retail use, provides us with a 35-year FRI lease, clears and prepares the site for construction, and puts in the basic utility services, including the slip roads to the public highway, we will agree to an initial rental of £8 a square foot, with five-yearly rent reviews, and we will construct small workshops for light industrial tenants.'

The developer did not completely 'rescue' itself from concessions on the financial details before they switched bargaining tactics to bring in the other unrelated tradables that met the higher of the council's priorities. It is impossible to know now, but I suspect that they might have done better on the financial details if they had deployed earlier the deadlock-breaking tradable of the small business units at the rear of the site.

The principle enunciated here is that of **linking the tradables**. The principle of trading off one tradable against another allows for marginal movements in one tradable to be compensated by marginal, though more highly valuable, movements in another. The fewer tradables that are linked together, the further you have to go to get agreement along whatever dimension that tradable is measured in. It will cost you more to get agreement with only one tradable than with several – on equity grounds alone, you would have to share at least 50 per cent of the negotiator's surplus if there were only one tradable and no other pressing reasons why you should get more (*see* Module 2). With only one tradable, the burden of meeting each other's wants falls entirely on that tradable. For example, if money is the only tradable then the negotiators will fight exceedingly hard over that single issue. This explains the ferocity with which people sometimes fight over single tradables like wages, prices, territory and such like. The result is often a lose-lose outcome for the negotiators. If one negotiator feels compelled by circumstance, time and perception to give ground to the other (for which, perforce, with only one tradable he cannot get anything in return), he is not only a loser, but feels one as well. Bitterly contested management-union negotiations can get into the single tradable trap. Neither dares give way and each goes to extremes of cost and consequence to avoid doing so.

An example of how the bargaining phase can suddenly turn in new directions by the introduction of new tradables can be seen in the following exchanges from the Royale negotiations:

Duval **If you agree to a penalty of £5000 a point below the target performance of 70 per cent uptime averaged across all the machines and calculated on a monthly basis, we will agree to pay an incentive bonus of £10 000 for every five points you achieve above 80 per cent uptime, calculated on a quarterly basis.**

Mercanti **There is an inequity in your proposal. In our view, rewards and penalties should mirror each other. Therefore, if you raise the incentive bonus to £5000 a point and calculate it on a monthly basis, we would be prepared to accept a penalty rate of £2000 a point, on the basis you have proposed.**

Duval **In principle, I am prepared to accept the notion of equity. However, I cannot accept incentive rates of £5000 a point for uptimes below 80 per cent. What I will suggest is that we agree a penalty rate of £2000 a point, pro rata to each individual machine, below 75 per cent performance calculated monthly, and that for every point above 80 per cent, calculated quarterly, we award an incentive bonus of £2000 a point.**

Mercanti **You have raised the performance target for a penalty to 75 per cent…**

(Debate on this issue ensues.)

Duval **In order to try to reach a final settlement, I am prepared to make the following offer. If you accept a penalty of £2000 a point for every point any machine falls below 75 per cent uptime and £5000 a point for every point below 70 per cent uptime, calculated monthly from the beginning of the next quarter, and issue credit notes against our main account for any penalties, and accept a reduction in your standard maintenance charges from £50 000 a year for each machine to £35 000 a year per machine, I will agree to a cash incentive bonus of £2000 a point for every point that all machines are above 75 per cent uptime, calculated monthly from the end of this month, and a bonus of £5000 per point for uptimes across all machines above 80 per cent.**

Mercanti **Could you clarify what is meant by 'across all machines'?**

Duval **Yes, that means if all machines exceed 80 per cent uptime for a quarter I will agree to a bonus of £5000 a point for uptimes greater than 75 per cent.**

Mercanti **I see. Well, I cannot accept a reduction in the annual maintenance charges to as low as £35 000 per machine. However, if you were to agree to the purchase of a new machine to replace Machine D, I could certainly look at some reduction in annual maintenance charges as the replacement would help me achieve your target uptimes and earn back the cuts.**

Duval **In that case let me amend my offer. If you agree to reduce the standard maintenance charge to £40 000 per machine, and accept my proposals on the penalty and incentive payments as they stand, I will undertake to discuss with you the purchase of a replacement machine within the next financial year, provided that its acquisition would be guaranteed to raise the average performance of all machines to over 80 per cent uptime.**

Mercanti **I agree.**

The negotiation was see-sawing on the issues of penalty and incentive payments, with Duval raising one or lowering the other in the search for a deal. He introduced the new tradable – a reduction in the standard maintenance charge paid to Mercanti for each machine – and used this both to drive Mercanti towards taking income in a performance-related scheme and to fund his proposals of additional bonus for over 80 per cent uptimes. For Duval, the uptime ratio was the high priority; for Mercanti his high priority was to maximise earnings from the maintenance contracts. But Mercanti also sells machines and a replacement for Machine D, the worst performer, would both give him sales revenue and help achieve his goal of maximising income and avoiding draconian penalties for downtime. For Duval, this new tradable – open for discussion only because, realistically, a purchase of that magnitude could not be settled at this meeting – also worked towards his own objective of higher than 80 per cent uptime. By linking the new tradables to the offer they moved the bargain to an agreement.

Where do we get new tradables from? Of course, circumstances do not produce neat rows of convenient tradables for you to choose at your will. But you can help

yourself to generate lists of tradables by engaging in a simple exercise which you can apply to whatever business you are in.

Exercise 6B

What are the negotiable tradables in your business?

The list could prove to be surprisingly lengthy. In workshops for computer field sales personnel I have seen small break-out groups develop as many as 64 tradables available to them and to their customers, though not necessarily for use in all negotiations. Some of the main list headings of their tradables included the following:

- Price
- Business allowance (another name for a discount)
- Trade-ins and disposal of old equipment (especially from rivals)
- Maintenance charges (on list price or actual paid price)
- Peripherals
- Software (dedicated or proprietary)
- Integrated with original manufacturer's equipment – supply parts (e.g. local lights supplied to Rover Cars)
- Warranties
- Consultancy
- Training
- Reference sites (useful to sales negotiators)
- Facility visits
- Previews of coming developments in CAD/CAM
- Installations
- Site preparation
- Delivery
- Have now – pay later/Pay now – have later
- Hot-line emergency help

An audit practice in one of the Big Eight accountancy firms developed a list of tradables, available even to them in the increasingly competitive profession to which they belonged, that was so impressive that it was circulated to every partner and every senior manager for them to keep by their phones.

In every business different tradables are culturally specific. Part of the task of learning your business is to learn about what is and what is not (normally!) tradable. For example, a firm of chartered surveyors conducted Exercise 6B in small groups of partners, and discovered a market advantage that they were not using when they compared the outputs of each group. One group had listed 'minimum length of lease' as a tradable and caused a minor rumpus by insisting that the traditional (at that time) convention of the minimum length of a lease being five years was unsuited to a fast rising market. Price inflation made some rents look decidedly weak after only two or three years (of interest to landlords) while five years was too long a horizon for a growing company to be locked into a lease in property too

small for it after two years (of interest to tenants). As professional surveyors work for both landlords and tenants (though not for both at the same time!) this new situation created a tradable, or more correctly, raised the importance of a tradable, previously only deployed in exceptional circumstances, above its normal inflexible value.

Creating lists of tradables – properly a task of the preparation phase, but also a task when stuck in the bargaining phase, where its significance is more easily recognised – is only part of the creative work of the negotiator. The bargainer has to use them effectively and in a timely manner. The key to the effective use of tradables is always to link them together, using movement on one as a condition of movement on another, or the introduction or acceptance of a new one as a condition of accepting those already on the table.

Exercise 6C

You are a trade union negotiator preparing for important negotiations with the company, or, if you prefer, you are a non-executive director just appointed to the board of a public company and you have been assigned to a subcommittee that is preparing for major negotiations with the local union. What tradables are available for the negotiation of an employee's remuneration package? List as many as you can think of on a separate sheet (your experience as an employee should help) and then compare it with my list in Appendix 2.

You might have used different names for them, or chosen subheadings from my list. This last is important: all tradables have a main heading and then a potential list of the variations you can make within each tradable, thus creating yet more tradables. By combining a well thought through menu of tradables you can improve your preparation significantly and improve your ability to use the bargaining phase to close the deal.

6.4 Bargaining to Close the Deal

The bargain in negotiation is the equivalent of what sales people call a 'close', which is a verbal device they use (and spend endless hours practising) to persuade potential buyers to place the order. When a negotiator says 'yes' to a bargain, the game is over. It only remains to write up what has been agreed. There is nothing more to discuss once a bargain has been accepted because the terms of the bargain are an explicit condition attached to an explicit offer. Clarification questions of a bargain usually precede its acceptance or rejection, though it is not unusual for the negotiators to clarify items while they are attempting to write up the agreement, and, sometimes, for negotiations to recommence when there is a misunderstanding on the details.

In the bargaining phase, there is a convergence of the negotiators' positions towards each other, but not necessarily by one or other making concessions across the gap that separates them on each issue. By linking their conditional offers across each tradable they engage in what has been described as a 'negotiation dance'. The

image is evocative for it captures well the bobbing and weaving of movements on some tradables in one direction with movements on others in another.

Technically, the problem of the bargain is *when* to propose it, rather than what it should contain. The timing is driven by the nature of your business, the content by your judgement, tempered by experience, and, of course, the enigma of opportunity. Bargains proposed too early – unless in the form of a written proposal and part of the normal structure of the negotiation – are vulnerable to antagonising the listener because they perceive you as too pushy and not properly responsive to their inhibitions, some of which they may not yet have had time to express, and are vulnerable also to a quick settlement before you have fully explored what it is that you are getting into. Bargains can also be too late, in that the negotiators spend all their time debating and proposing with nobody apparently willing to take the lead and go for a decision. Some deals just wither on the vine.

To offer a bargain is to call for a close to the negotiations. It is an explicit statement of an agreement that you are prepared to settle for without further elaboration. This itself makes the decision of when to close a lot easier – by offering a bargain you are asserting your readiness to close, and it follows logically, if not always in practice, that if you are not ready, don't bargain! You can protect yourself to some extent by ensuring that there is no ambiguity in your view that nothing is agreed until everything is agreed and, therefore, that bargains offered during the course of negotiations on individual issues are not separable from other decisions on other issues. You are only making a provisional agreement on the individual issues and the negotiation cannot close until you have completed bargains on all the issues linked together.

You have already seen the 'new tradable bargain' used by Duval and Mercanti in the Royale negotiations, when Duval introduced a reduction in the standard maintenance charges and Mercanti introduced the prospect of replacing Machine D. Another example of that popped up in the shopping precinct negotiations with the council. While the offer of the rear strip for business units (a new tradable) broke the deadlock it was not yet sufficient to close the deal. The developer, however, did not have anywhere really to go, in terms of improving the offer on the other tradables, but they were acutely aware by now of the pressing significance of the council's inhibitions about employment. What they did was offer the following bargain:

Developer **We think we can make a suggestion that will help us to get an agreement. If the council agrees to our proposals to re-zone the site for retail use, provides us with a 35-year FRI lease, clears and prepares the site, puts in the basic utility services and slip roads and accepts our offered terms on the rental, we will construct up to ten small business units at the rear of the site, and we will undertake to press the contractors and tenants to give preference in their local recruitment to the families of former employees of the engineering works, providing that they are otherwise suitable for the 100 jobs likely to be on offer when the shopping precinct opens.**

Council **Are you prepared to make that a public commitment?**

Developer **Yes, though we would rather we did not release details of our financial arrangements just yet.**

Council **I think we have an agreement.**

The developer had not only introduced a new tradable, he had used the **traded concession bargain**. This device helps a bargain over the last hurdle, when the negotiators are close but not yet closed. In the shopping precinct case, the worth of the actual traded concession: 'press the contractors and the tenants', is hardly a binding commitment and a lot will depend on how genuine the developer was in his intent to carry out the promise. He can press with all the strength of a feather or take a virtual sledgehammer to this issue when selecting contractors, and can add it into the deal with the tenants. However, the outcome in this case is less important than the device used.

Traded concession bargains – the traded concession is the final movement for the deal – can take many forms. They could be an extra quantity of something (I have seen an extra peripheral for the MD's desk seal a large mainframe order), or a special colour strip added to a van fleet's livery, or something less tangible, such as a commitment by the union negotiators positively to recommend the deal to the workforce. They tend to be small and, because there is often not much left to trade on the main issues, they often are intangibles ('use best endeavours' is a common one).

Another device in the bargaining phase to secure the deal, is the **summary bargain**. This replicates in form the summary proposal that leads to the bargain. You simply summarise everything that has been put forward as a bargain and ask for the deal:

> … If we can agree on that basis let's write it up.
>
> … therefore, I think we have the basis of a deal.
>
> … I think when we both consider what I have summarised, we will conclude that we have made a lot of movement to accommodate each other's requirements, and therefore I recommend that we go ahead.
>
> … If that summarises your understanding of what we can agree upon, I suggest we shake hands and sign the agreement.

What happens if they raise an objection or an issue with which they are not quite happy? Fine. Decide whether the concession bargain will be relevant, and if it is, proceed as above; if it is not, repeat the summary: 'Gentlemen, I can go no further, having made as much movement as is possible, and I must ask you whether this minor issue should stand in the way of a major deal which we have worked so hard together to construct. I must ask for your decision on the proposal as it stands.'

Circumstances will dictate which is the appropriate route forward. The repetition of a summary bargain, or the refusal to consider further small movements, leads you to the **or else bargain** – probably the most risky of the bargains. It is close to the take-or-leave-it implications of a price tag in a shop, or the declaration that it is your 'final offer' (which, woe betide you if that is a bluff and they call it!). And what happens if the other negotiator decides to take the 'or else' (she thinks you are bluffing) and forces you into your threatened action, at a heavy cost to you and to them? It takes time to repair the damage of a bruising dispute, when, instead, if wiser counsels had prevailed, you could have presented your bargain in a less haughty or provocative manner. Presented properly, more in sorrow than anger, and with a solemnity that reflects the seriousness of the options, an or else bargain can achieve its goal of impelling the meeting towards a decision if it is necessary to reach a decision there and then.

Somewhat less risky than an or else bargain (though it has its own risks) is the **adjournment bargain**. In this case you summarise the bargain as you see it, highlighting, of course, the contributions that they made to its final form, and say something like:

> If that summarises what we have before us, I suggest that we adjourn/sleep on it/take counsel from our own advisors/(and such like), and meet again (specifying a date, time and place) to present our views, and hopefully at that meeting we will be in a position to come to a final agreement.

The risks in the adjournment are that in your absence, they get a better offer from your rivals, that they take new inspiration from a change in their perceptions or information, that a distant player in their team intervenes and frustrates a perfectly good deal with awkward or obstructive objections, that you have timed it wrong and your deal elsewhere collapses, or that they use it as an excuse to get out from the deal. But bearing in mind that the adjournment bargain is a last resort and is an attempt to avoid the or else bargain, it is probably inevitable that you should take those risks.

6.5 The Agreement

The outcome of a negotiation is a decision and that decision is either an agreement or a failure to agree. If nothing is agreed until everything is agreed, then the negotiators must agree whatever it was that they agreed to. This somewhat circular presentation of the imperative to be clear that when you leave the table you know what you and they have decided is of the utmost significance. Countless errors and conflicts could be avoided if only negotiators would avoid a 'sign, grabbit and run' approach. The euphoria of coming to the end of their negotiation – with the final bargain accepted verbally by both negotiators – tempts the participants to relax and leave the details to later. This is dangerous.

Exercise 6D

Without any reference to previous pages, write down on a separate sheet the final bargain offered by the developer's agent to the council in the shopping precinct negotiations.

Compare your answer with the text of the bargain in Section 6.4. Did you get everything exact in every detail? What did you miss? Most people will have missed something, or some detail or some nuance of what was said. For example, it could be that somebody would assert that the developer was committed to finding jobs for all the unemployed engineers when in fact he only offered to press the contractors and tenants to give preference to the families of the former employees, not the engineers themselves, in their local recruitment and only if they otherwise met the requirements of the job vacancies. Out of such confusion, a terrible myth of a broken promise could emerge.

During the negotiators' interaction, so much comment is made about the proposals and bargains that reach the table, and so many explanations, promises and clarifications are made, that negotiators have plenty of opportunity to confuse one set of proposals with another. Mostly, these confusions seem to work in favour of the person claiming them as fact – though, occasionally, we can be surprised because we had thought the offer was worse for us than it was in fact, and we are pleased to see that there was more for us in it than we supposed. Regular summarising should help clarify the contents and meaning of statements, proposals and bargains. Verbally restating what has been agreed or, preferably, writing it up there and then, to record that the negotiators agreed to what has been agreed, is another example of the usefulness of summarising in negotiation. It is the last (and best) chance, while the negotiators are still together, to be clear what they have decided, and I know of no better way than by jointly agreeing to a (written) summary.

If the negotiations are conducted on the telephone, then a verbal agreement must suffice, supported immediately by a written confirmation of the details (and do this on your own behalf, irrespective of arrangements made by the other negotiator to do the same).

Mistakes made in implementing a decision can have a variety of causes. Where the mistakes are genuine – and obviously this is fairly common – they still have an unfortunate effect on the person affected. He or she can hardly be damned for the lingering suspicion that what is claimed to be a genuine mistake is in fact a case of one person taking advantage of another. In short, the genuine mistake is treated almost the same as the deliberate attempt to cheat on what was agreed. No force on earth can convince someone that they have not been cheated when they firmly believe that they are the victims of a conniving cheater.

Ask yourself why it is that hotel accounts invariably show errors of overcharging, double charging and unbought items from the dining room charged to your account and always in favour of the hotel – exceptions the other way in your favour no doubt exist statistically, though they have not yet been given to me. Even stating this experience illustrates how easy it is for suspicion about somebody else's motives to

become embedded in one's thinking. Yet it is avoidable: agree what has been agreed and avoid difficulties later.

Epilogue

The bargain is the crunch of the negotiation process. It is the statement of the intended output of the negotiators' labours. It is an implementable decision, which, if agreed, closes the deal. After the bargain is agreed and recorded, there is no more work to do by the negotiators. They transform from negotiators into suppliers and customers, management and employees, colleagues and partners, or whatever. Their role as negotiators is over, for the time being at least. They get on with other aspects of their lives. Mustafa gets on with running his business and Bertrand gets on with finding buyers of his Pomme systems; Duval moves on to look for another process to improve his company's drive for quality, Mercanti to managing the supply of machines and maintenance services; the council officials step into their professional role as planners and the developer's agents to servicing another client; and you watch the match with your son and he washes the car.

By observation, the bargaining phase is proportionately a short phase, perhaps 3-5 per cent of the time taken by the face-to-face interaction (compared to 80 per cent plus by the debate phase). It may be short proportionately but it is no less critical for that. Loose or careless language in bargaining is extremely costly. What may be a weakness in proposing becomes a positive danger in bargaining. Weakness in proposing can shift the psychological balance against you by encouraging the other negotiator to be more demanding as he obtains concessions from you for little or nothing in return. Unconditional proposals undermine your negotiating room and encourage the habit of expecting something for nothing. But the proposal is protected by its tentative nature and the fact that nothing is agreed until it is finalised. The other negotiator cannot accept a proposal as a final and implementable offer. There is still some work to do.

The bargain is anything but tentative. It is a final statement, which if agreed to, is to be implemented as it stands. There is no protection for mistakes. An unconditional bargain is simply a 'give-away'. It is an unpriced concession. It is like the supermarket labelling its bottles with the statement: 'you may take these home with you,' and forgetting to add the price: 'for only 65p a bottle' (causing consternation – and accusations – at the check-outs as you march through without attempting to pay).

The only technique the negotiator can employ to prevent unpriced concessions slipping away is to make them conditional: **if** you accept these specific conditions, **then**, and only then, will I deliver this specific offer.

Not only is the form important but so is the order. In bargaining, conditions are always stated first (that way they are not forgotten) and the offer follows second. It is a mistake to reverse the order because the slightest carelessness turns the bargain–statement into a bargain-question: 'If I deliver this specific offer, will you accept these specific conditions?', to which the answer is often a 'no' (to test your resolve), or a 'not quite' (to demand an added concession). Once the habit of bargain-questions is caught, it is not long before the negotiator gets into the rut of offering

first and then forgetting to add in his conditions, and he or she becomes a regular unconditional bargainer.

In the bargain–statement the rule is: **conditions before offers**.

Module 7

Styles of Negotiation

Contents

Prologue

7.1 Introduction

Dan O'Reilly, CEO, Phoenix Enterprises, was on a business trip to Ogoland, where the authorities conducted their economic affairs with the same disregard for world standards as they did their human rights policies. The officially enforced rate of exchange of pounds sterling for quonks was one for one, which made beer drinking, when you could get some, an expensive weakness at five quonks a small glass.

Dan was in his hotel lobby one afternoon when he was approached by a local resident who offered him a special deal: an exchange rate for sterling of one pound for 20 quonks. 'Are you interested in changing £50?' asked the stranger. 'You bet,' said Dan. 'There is a small problem, however,' the stranger whispered, 'the local police are cracking down on unofficial transactions and if you think the hotel you are in does not live up to its official five-star status, you should see the local jail. Therefore, we must be sly about our business. You take your £50 in a paper bag and leave it under the bench in yonder park and I will take my Q1000 and leave them under your bed in your room.'

'What a splendid idea,' said Dan.

Exercise 7A

Read the two statements and then, selecting from the list of options below, decide what you believe would be most likely to happen next.

Statements:

1. Dan will place £50 as instructed under the park bench.
2. The stranger will place Q1000 as offered under Dan's bed.

Options:

A. Both Dan and the stranger will do as in statements 1 and 2.
B. Dan will do as in statement 1, but the stranger will not do as in statement 2.
C. Dan will not do as in statement 1, but the stranger will do as in statement 2.
D. Neither Dan nor the stranger will do as in statements 1 and 2.

This is not an easy question to answer. A lot could depend on what you knew of Dan's personality (you know nothing of the stranger's). But even with that knowledge, you still do not know what will happen when the two men separate to carry out, or not as the case may be, their roles in the transaction. Given that in the nature of this transaction (first set out as a business computer game in 1980), neither Dan nor the stranger can react to what the other person does when they are no longer in contact with each other – they can only act in anticipation of what they think the other person will do – it is impossible to predict what would actually happen. You can, however, make an estimate of what you think most people on average would do in this or a similar situation. And that is the purpose of the exercise: to get you to consider what you think other people are up to when you cannot communicate with them and when you are dependent on what they do for an outcome that you regard as important in your business, or even personal, life.

Suppose Dan knew for certain that the stranger was going to place Q1000 in your room; would he still place the £50 under the bench or would he cheat? Set aside the ethical issue for the moment and consider the options if he did behave in this wholly reprehensible way. If he cheated, knowing that the stranger had not done so (how he knows what the stranger will do is not relevant), Dan would be Q1000 better off, and the stranger, who had kept to the bargain, would be worse off by Q1000. As the transaction is illegal he could not complain to the police and if Dan believed that he would never see him again (perhaps he was waiting for a taxi to the airport to return home when the stranger approached him), he would be beyond earthly retribution.

Suppose now that the stranger knew for certain that Dan was going to cheat (he saw Dan stuffing an envelope with strips of the local newspaper instead of £5 notes), would he go ahead with his side of the bargain? Extremely unlikely, I am sure you would agree. Neither of them in these circumstances would be worse off if they both cheated (they only risk losing torn strips of the local newspaper), and one of them, perhaps, could be better off if he alone cheated, though, by cheating, they forego the benefits of joint co-operation, in which they each would gain something from the transaction. Presumably, the stranger makes a profit even at a 1 for 20 exchange rate and Dan is able to enjoy the local brew, Kagwasani Beer, knowing he had paid a much lower price for it.

The problem is that neither Dan nor the stranger knows what the other intends to do. They must rely on their judgement. Their choice is between defection from their decision to co-operate and co-operation to their mutual advantage: the former either prevents them from being cheated by the other, or it enables them to cheat the other; the latter enables them both to gain. Why then do they fail to co-operate? Because the outcome is dependent upon their own and their partner's **simultaneous** choice between co-operation and defection.

Faced with the choice between defection and co-operation, we can set out in a simple diagram what each of them gets – their pay-off – for any combination of possible choice they both make simultaneously. First, we name the choices facing Dan and the stranger, 'Co-operate' (C) when they choose to fulfil their part of the bargain, or 'Defect' (D) when they choose *not* to fulfil their part. Then we enter the outcomes in a diagram for all possible combinations of choices that they make, such as in Figure 7.1.

		The stranger	
		C	D
Dan	C	+Q1000, +£50	–£50, +£50
	D	+Q1000, –Q1000	Q, 0

Figure 7.1 Pay-off diagram for Dan and the stranger

To read the diagram, taking Dan's pay-offs, we read horizontally along either the row marked C or the row marked D and check the joint decision he obtains for the choices the stranger makes, shown by reading down the columns marked C or D. The first number in each square is Dan's pay-off for that combination and the second one is the stranger's.

For example, look at the top left-hand square and note that this combines a C choice by Dan with a C choice by the stranger, i.e. they are both co-operating by placing the agreed amount of cash in the agreed places. Dan gets Q1000 from under his bed and the stranger gets £50 from under the bench. They are both better off and this is the preferred outcome.

Now look at the bottom-right hand square. What combination of choices does this represent? Yes, they are both defecting, i.e. a D choice by Dan is simultaneously met with a D choice by the stranger. What is Dan's pay-off? He gets nothing because the stranger did not put Q1000 under the bed. What is the stranger's pay-off? He too gets nothing because Dan did not put £50 under the bench. Both either tried to cheat the other, or believed that they would be cheated by the other, and hence protected themselves from a con trick.

The top right-hand square and the bottom left-hand square are interesting combinations in that their choices did not coincide. In the top right-hand square, Dan chose C and placed his £50 under the bench but the stranger chose D and did not place Q1000 under the bed, and therefore Dan lost his £50 and the stranger gained Dan's £50. In the bottom left-hand square, Dan chose D and defected, he did not

place £50 under the bench, while the stranger chose C and co-operated by placing Q1000 under the bed. Dan gained the stranger's Q1000 and the stranger lost his Q1000. In either of these two squares one of them gains and the other loses. Whatever motivated one of them to defect, the loser is likely to perceive the defector's motivation as an intention to cheat. They feel conned.

This takes us back to the original question. What would be the likely outcome of this exchange?

Exercise 7B

Suppose you were Dan. What would you do? Co-operate and make a possible gain but risk losing £50 to a conman; defect and earn a reputation for cheating (if he co-operates) but risk nothing (if he defects)?

You face a real dilemma. There is no resolution to a dilemma in an abstract sense. Given only two choices you resolve the dilemma in the practical sense by choosing one of them. The currency game highlights the nature of a dilemma by highlighting the tension between what is on one level the rational best choice – both co-operate – and on another the rational defensive choice – both defect.

In negotiation, and business generally, we face similar dilemmas, though we may not think about them very often. How should we behave when we are uncertain of the intentions of the other negotiators? Are they going to be co-operative or will they defect? To what extent will they be open and trustworthy, in which case we can safely reciprocate in kind, or will they be devious and untrustworthy, in which case we must protect ourselves? How do they see our intentions? If they misread them – they co-operate when we defect to protect ourselves or vice versa – we could unintentionally damage the relationship because we have not influenced their perceptions appropriately, or, perhaps, we did influence them correctly, we did convince them that we were open and trustworthy and they responded in kind, but at the last moment we lost our nerve and protected ourselves by a defection. You can see that the options are recursive: 'If we knew that they knew that we knew that they knew… we would both know what to do, but we don't, therefore what is he thinking about what I am thinking he is going to do?'.

The existence of these and similar dilemmas influences our negotiating behaviour whether we are conscious of it or not. Our approach to other negotiators and our perceptions of their intentions determine our style of negotiation.

Dialogue

7.2 Trust in Time

Rodney (Vice-President [Administration] at Phoenix) arrived in Ogoland to finalise the details of a new contract that his boss, Dan O'Reilly, had negotiated on a previous visit. On his first night at the hotel while he was sipping the lukewarm Kagwasani Beer at five quonks a glass, he was approached by a stranger who offered him a special deal: an exchange rate for sterling of one pound for 20 quonks. 'Are you interested in changing £50?', asked the

stranger. 'You bet,' replied Rodney. 'There is a small problem,' the stranger whispered, 'the local police are cracking down on unofficial transactions and if you think the hotel you are in does not live up to its official five-star status, you should see the local jail. Therefore, we must be sly about our business. You take your £50 in a paper bag and leave it under the bench over there in yonder park and I will take my Q1000 and leave them under your bed in your room.'

'But I too have a problem,' said Rodney. 'I draw my per diem each morning from Barlloyds Bank next door and this only amounts to £10 a day. I am interested in your proposition and I suggest, therefore, that instead of changing £50 in one go, we arrange to do it £10 at a time, starting this Monday afternoon, in the manner you have suggested over the next five days until Friday.'

What a splendid idea,' said the stranger, and they both parted to make their arrangements for the transaction.

What do you think of Rodney's cunning plan? Was he smarter than Dan in devising a system by which he minimised his risk? Let us examine the possibilities.

Each day, Rodney and the stranger face the same choice of whether to co-operate or defect and they receive a pay-off dependent both on what they do and what the other negotiator does simultaneously. These are set out in Figure 7.2.

		The stranger	
		C	D
Rodney	C	+Q200, +£10	–£10, +£10
	D	+Q200, –Q200	0,0

Figure 7.2 Pay-off diagram for Rodney and the stranger

There is an additional complication, however. After the first day, Rodney and the stranger know what happened on the previous day and this influences how they will behave that day. Hence, if on Monday, either of them defects, it is unlikely that the other would risk leaving his money as arranged on Tuesday or any other day. The game would cease and it would be extremely unlikely that it would start up again. Therefore, there is a good chance that both would co-operate. But what about Friday, the last day when the exchange takes place? On the one hand a degree of trust would have built up over the successful transactions they completed on the four previous days and this might create enough momentum for them to co-operate on the final day; on the other hand, it is the last day of the game and the pressures of the single shot game between Dan and the stranger could reassert themselves, and cause either or both of them to defect.

Exercise 7C

The possible choices of Rodney and the stranger from Monday to Thursday are set out in Table 7.1. Complete your assessment of what is likely to happen on Friday and state your reasoning.

Table 7.1 Sequence of choices in five rounds of the currency game

	Rodney	The stranger
Monday	C	C
Tuesday	C	C
Wednesday	C	C
Thursday	C	C
Friday	C/D	C/D

If you decided that they would *both* choose to co-operate (Friday = C, C), you are assuming that the trust they have built up over the changing of the £40 is sufficient to carry them through to the changing of the last £10. Rodney might consider it worthwhile to risk co-operating with his last £10, given the profit in quonks he has made with his £40 (you do get used to Kagwasani Beer after a day or two, and at four glasses to the pound rather than £5 to the glass you also lose a sense of judgement about most other things). The stranger might reason similarly with his last Q200 (acquiring foreign currency is a sure way to wealth in Ogoland). They both might have been influenced by their successful transactions over the previous four days and this has compelled them to co-operate without concern for the risk in doing so. If they are overly concerned about the risk then they would play differently.

If you decided that one of them would co-operate and the other defect (Friday = C, D or D, C), you have to explain why one of them is compelled to defect by the situation and the other is compelled to co-operate. What influences one should surely influence the other? If they react differently to each other then one of them was strongly influenced by the success of the previous four days and the other was strongly influenced by possible failure of the last day. Why should one be more concerned than the other? Because he became concerned about his vulnerability on the last day, perhaps, and saw a defection as the least risky choice?

If they both choose to defect, you are assuming that the fear of a loss compelled them both to protect their interests by defecting. Their concern at losing £10 and Q200 respectively, because of their perceptions of the likely behaviour of the other, led them to defect.

However, this last circumstance raises interesting thoughts. If Rodney perceived that the stranger would be likely to defect on Friday and he therefore defected in self-defence, where does that leave them both on Thursday? If we suspect that the motives of the other person are based on an intention to cheat on Friday, how can we be sure that he would not cheat on Thursday? It would make sense, Rodney could reason, for him to assume that I would realise my vulnerability on Friday and

defect also, but that I might not be so vigilant on Thursday; therefore, he is likely to defect on Thursday to catch me unawares, so I had better defect in self-protection too! In this frame of mind, Rodney might reason that the stranger might defect on Wednesday, in which case it makes sense for Rodney to defect too! Hence, once Rodney reasons in this way under the suspicion that he is vulnerable to the stranger's defection, he has no reason not to defect on Tuesday and on Monday. In short, the whole transaction aborts because neither trusts the other.

Despite this somewhat pessimistic conclusion that Rodney's ploy to ensure the probity of his partner's behaviour contains the same destructive seeds within it as Dan's one-off deal, we do at least have the prospect that a repetitive deal could contain within it prospects of a trusting relationship building up. It is really a knife-edge situation: trust begets trust and cheating begets cheating, and the risk of cheating begets actions to protect ourselves that make us out to be cheats! Which way the game will be played is uncertain and it is this uncertainty which creates the dilemma we are trying to resolve.

Interestingly, the introduction of a time dimension, with repeated plays of the currency game, does highlight the point that there is a better chance of a trusting relationship building up the longer the negotiators know that they are going to depend upon each other through repeated plays of their dependency, or put another way, if negotiators do not know the finite length of time of their relationship, they are less likely to react to their pending and foreseen vulnerability in the final round of the relationship. For example, if Rodney makes an arrangement with the stranger that they will go through their transaction each day for an indeterminate number of days, such as until he is recalled by Phoenix headquarters on a date not yet announced to him, and consequently unknown to the stranger too, their vulnerability to the other cheating on the final day, Friday, is removed. The unknown duration of their relationship removes the motivation to cheat arising from their 'final-day' vulnerability, though other influences could motivate them to cheat. Presumably a motivation to cheat by the stranger would arise from a calculation that the profit from a surprise defection – Rodney's £10 – exceeds the profit from successive and numerous transfers of quonks into pounds at a rate of 1 to 200 (perhaps the local police are asking too many questions about his sources of income). For Rodney, in this particular case, cheating on his last day – which day presumably he would know about before the stranger – nets him Q2000, but quonks have no exchange value outside Ogoland and Q2000 worth of Kagwasani Beer is more than a mortal could endure. A more sensible suggestion would be for Rodney, on his last day, to announce the end of their profitable relationship, and instead of groping through the transaction, he could buy the stranger a glass of Kagwasani Beer, perhaps mentioning that in view of their successful business he will recommend him to George (Vice-President, Sales), who is the next executive from Phoenix on his way to Ogoland.

Some transactions are known to be of finite number to the parties before they negotiate. The deals offered by a used-car salesperson, for instance, by their nature are one-off deals – you do not buy a used car (unless you are in the trade) every day. This affects the view that people have of a used-car seller – they are hardly perceived by most people to be a model of business rectitude. One-off deals excite

suspicions. Many businesses, anxious to hold onto their customers, go to great lengths to promote the sense of trust that their customers can place in them. They want a long-term relationship with their customers and, with 'no quibble' guarantees and instant refunds in full, they market their trustworthiness in order to persuade their customers to trust them. Some major used-car companies spend a great deal on marketing an image that counters the popular one of their being spivs and sharks. Once earned, a reputation for commercial brigandage is a lot more difficult to shake off than one for commercial decency.

7.3 Negotiator's Dilemma

There is a well-known game in social science (though I have seen it also applied to genetics and moral philosophy). The original game was developed by Professors Merril Flood and Melvin Dresher in January, 1950 at the RAND Corporation in Santa Monica, California, and it was formulated into a story of two prisoners a few months later by Professor Albert Tucker, and is now widely known as Prisoner's Dilemma. In essence, we have been discussing versions of Prisoner's Dilemma in the exploits of Dan and Rodney with the stranger. In its original 1950s format, the dilemma centred on two prisoners who had been arrested on suspicion of having committed a major crime, though the exact details of the prisoner's story have changed many times over the years. The one I use goes as follows.

The investigating authority (the District Attorney) could not prove that the prisoners had committed the crime but he was willing to engage in a device that would have a good chance of securing at least one conviction, and perhaps two (the ethics of 'due legal process' do not enter the discussion). He separated the prisoners so that they could not communicate with each other and offered each of them the same deal:

'You have two choices. Either you confess or you do not confess to the crime. If you confess to the crime and your partner also confesses, you will each receive ten years in jail (it was a very serious crime). If you confess but your partner does not, you will be set free, after giving evidence that convicts your partner, and he will get 20 years in jail. If you do not confess and your partner does, he will go free and you will get 20 years in jail. If, however, neither of you confess, you will both be convicted of a minor charge (wasting police time?) and you will serve three years in jail.'

Faced with this situation what would you do, bearing in mind that what happened to you as a result of your choice depended upon what your partner also chose to do? The fact that it is not obvious what you should do is your dilemma. If you could both co-ordinate your response, you would choose (presumably) not to confess, but because you cannot co-ordinate your choices you face a far from obvious choice: confessing gets you either ten years or release; not confessing gets you either three years or 20 years.

Prisoner's Dilemma has been much researched and written about in the 40 years of its life. You should recognise the similarity between it and the currency game. Both imply a benefit from co-ordination – explicitly denied to them in the rules of

the game – and both leave the players with the unhappy choice of defecting (in Prisoner's Dilemma choosing to confess; in Currency Dilemma choosing to hang onto their own money), either to protect themselves or to take advantage of a co-operative play by the other player.

It is inescapable that the rational choice is to defect, yet it is as inescapable that this foregoes the benefits of co-operation. This conclusion has sometimes shocked individuals who have faith in a greater goodness in humankind than the imperatives of dilemma suggest is likely. But unless the imperatives of defection are acknowledged it is unlikely that we can establish a basis, or a means to secure co-operation. I can illustrate the contest between rationality and the benefits of co-operation with a simple diagram based on a prisoner's dilemma formulation of the choice between war and peace. In Figure 7.3 two countries have a choice of using some of their GNP to prepare for war or of using all their GNP for peaceful output.

		Country B	
		W	P
Country A	W	80, 80	140, 0
	P	0, 140	100, 100

Figure 7.3 War or peace?

As usual, their pay-offs do not just depend on their own choice but also depend on the choice the other country makes. If both prepare for peace by having no war-related expenditures at all, their GNPs would be 100 each (the numbers are not relevant as it is the order and direction of their magnitude that count). However, if country A prepares for peace, and has no means of waging war, it could be taken over by country B if it prepares for war and invades country A. In this circumstance, country A loses everything to country B and country B increases its GNP to 140 (some output is lost in the invasion and the rest is devoted to the costs of occupation). Similarly, the fate of country B could be decided if it chose peace and country A chose war. Hence, both countries are compelled to choose to devote resources to preparing for war, which reduces their civilian GNP to 80 each, and deters the other from aggression. As a GNP of 80 is less than a GNP of 100, the rational choice has reduced their GNPs below what is achievable in the absence of a risk of one of them defecting. Unambiguously, the rational choice (and, I suspect, the only electable choice) has made them both worse off.

Fine. But this leaves the problem of how we arrange co-ordination to make two parties better off. This is the negotiator's dilemma.

Merely deciding to be co-operative is fraught with dangers. The choice may be unilateral but the outcome is dependent on the other negotiator's independent choice. Surely, you might interject, in negotiation we are not barred from communication, as in Prisoner's Dilemma type games, and with communication we can overcome the main barrier to co-ordination of choices. True, but the mere existence of an ability to communicate does not eliminate the imperatives of a dilemma;

indeed, communication can make co-ordination as difficult as if we were playing a dilemma game.

Let me illustrate this assertion by a modified version of Prisoner's Dilemma which we have played with thousands of negotiators on our workshops. The version presented here only sharpens the dilemma by adjusting the pay-offs. In its simplest form the game can be played by any two negotiators, each of whom have two pieces of paper, one of which is marked Red and the other is marked Blue. The players independently choose which paper to reveal to the other (folded such as to be unreadable before the simultaneous revelation) and they score points dependent on the combinations of colours that are played in each round. They are told, without elaboration or interpretation, only that their task is 'to maximise their positive score'. The pay-offs are as shown in Figure 7.4.

		Negotiator B	
		Blue	Red
Negotiator A	Blue	+3, +3	–5, +5
	Red	+5, –5	–3, –3

Figure 7.4 **Red or Blue?**

By now you should be familiar with how the game is played and you could usefully persuade a friend to play ten rounds with you to ensure that its lessons are fully understood. For the first four rounds we replicate the Prisoner's Dilemma situation and permit no communication between the negotiators. Each hands over a folded paper and receives a folded paper simultaneously. On opening the papers, the negotiators note the combined plays and score them according to the pay-offs in Figure 7.4. Thus, if they both have played Blue, they score 3 points; if they both play Red they score −3 points; if negotiator A plays Blue and negotiator B plays Red, then A scores −5 points; if negotiator A plays Red and negotiator B plays Blue, then A scores +5 points.

After noting the scores for each round, the negotiators hand back the paper they received and then choose which of their colours to play in the next round, repeating the same performance for each round and scoring as above. At the end of four rounds, they may communicate with each other and they may choose to co-ordinate their play over the next four rounds. For example, they may choose to play Blue together. If they do so, and if they keep to their agreement (it is a non-enforceable contract!), they will score $4 \times 3 = 12$ points each. If either of them breaches the agreement, they will score differently, though how differently will depend on when they choose to defect.

At the end of the eighth round, they may again communicate and again they may seek to co-ordinate their choices for rounds 9 and 10. However, to make things interesting and to tempt defection, the scores for rounds 9 and 10 are doubled, both positive and negative: two Blues score +6; two Reds score −6; a Blue played to a

Red scores −10; and a Red played to a Blue scores +10. At the conclusion of the ten rounds each player adds up his total score.

The Red and Blue game permits two brief scheduled negotiations between the players after rounds 4 and 8. They can agree to co-ordinate their scores but agreement and implementation are vulnerable to defection still. People do not automatically find the co-operative outcome merely because they can communicate. It all depends upon the communication and what has happened between them in the earlier rounds before they communicate.

Consider some results from our workshops. In round 1, the majority of negotiators play Red, not Blue, that is they open with a hostile play. When asked why they do this, the most common answer is that this minimises their risk of a loss, i.e. the most they can lose is −3 and they have a possible gain of +5. This, remember, is the rational play. They do not appear to consider the impact on the other player of their opening with a Red, nor do they consider the fact that the game is played over ten rounds and, whatever gains they might make in round 1, they are going to be vulnerable to Red play for nine more rounds.

What of the negotiators – the minority – who open with a Blue? Their reasoning is that they want to signal a desire for co-operation which, though laudable, is risky. They risk losing −5 for a prospective gain in round 1 of +3. But though risky, this play is sensible if co-operation is to be assured. Evidence of a willingness to co-operate by playing Blue at the start of the game carries more weight with the negotiators after round 4 than evidence of distrust (or worse, a desire to trump with a Red) by playing Red in round 1. The Blue negotiator is definitely looking for co-operation, while the Red negotiator may or may not be, depending on how we perceive his motivations for playing Red (there are no prizes for guessing how most people perceive such play).

What about round 2? Should the negotiator who played Blue and received a Red continue to play Blue? Evidence suggests that the Blue player who has received a Red switches to Red in round 2. Sometimes the player who played Red in round 1, appears to regret his decision when he received a Blue, and plays Blue in round 2. This is done to signal his regret and to show a willingness to co-operate from then on. Unfortunately, this is often too late to obviate a Red from the previous Blue player who has switched to Red in retaliation. However, if they can get to round 4 with at least a Blue play from each of them, it is highly likely that they will be able to negotiate a co-operative agreement from then on as their actions support their claimed wish to co-operate.

For some players, the communication after round 4 definitely helps and they are able to find a basis for co-operation for the rest of the game. This appears to be most common when there is an aggrieved negotiator who has played Blue at least once and received only Reds in return. Here the nature of a trusting act is revealed. Usually, the aggrieved negotiator who is at least – 5 points down on the first four rounds compared to the Red negotiator – they both have negative scores – proposes that they both play Blue over rounds 5 to 8, but because this calls upon him to show his trust in the face of four rounds of Red play from the other negotiator, it is only fair that he be allowed to play Red in round 5 to a Blue. By agreeing to this move,

the Red player demonstrates his willingness to co-operate and allows the Blue player to 'catch up' his score. If he delivers under this agreement, all is well and they both end up with positive scores; if he defects again, the Blue player reverts to Red and they both end up with negative scores.

Few pairs of negotiators end up with maximum positive scores of 36 points from 10 rounds of Blue play (and as few end up with negative scores of −36 each). Most have scores of less than 36, indicating that there has been some mixed Blue and Red play. A minority of negotiators fail to get a positive score and end up with negative scores in the range −6 to −24. The imbalance between those getting positive scores of less than 36 and those getting negative scores up to −24 suggests that communication does assist them to co-ordinate their play and to recover from early Red play. Sometimes they apparently recover from early Red play and work together with mutual Blue play for most of the rest of the game, but the past Red play can still rankle enough for there to be a defection in rounds 9 or 10, which sets back their scores if they both anticipate a defection by the other and hence defect to protect themselves.

The negotiator's dilemma can be summed up as follows: 'If I act to protect myself from my vulnerability to the other negotiator's predatory behaviour, I will be assured of a smaller loss than if I actively trust the other negotiator's good intentions and discover afterwards that I was mistaken in trusting him. I know that my act of self-protection is likely to be reciprocated by the other negotiator and we will both be worse off than we might be if we could trust each other. I would like to be different but can I take the risk? I wonder what he is thinking? **Therefore, I defect, not because I want to, but because I must.'**

Negotiators face this dilemma every time that they negotiate. They may not consciously think of themselves in a dilemma at all. They develop an approach to negotiation, however, that indicates how they have decided to resolve the dilemma. For some, their approach is blended with their personality; for others, it is adjusted to the circumstances. But resolve the dilemma they do, for otherwise they would be paralysed into indecision and no negotiations would take place at all.

7.4 Red, Blue and Purple Styles of Negotiation

The red–blue game is not identical to a negotiation because it operates under strict rules and communication is highly restricted, whereas in negotiation there are no set rules and communication is unrestricted. The red–blue dilemma has its lessons for negotiators and is ever present. We can also make use of the concepts red and blue for analysing aspects of negotiation behaviour. First, however, we need to shift the meanings of 'red' and 'blue' slightly and introduce another colour, 'purple'.

There are two main styles of negotiation behaviour. I shall describe them as Red or Blue. Red can be thought of as a sign of danger, of war rather than peace and it describes somewhat crudely the negotiating style that is based on '**more for me means less for you**'. In its more extreme form it summarises the intentions of the haggler in the distributive bargain: 'Whatever else happens, I intend to get the largest slice of the negotiator's surplus.' Red is **results** oriented. Blue is the opposite style to

Red. Blue is a sign of submission, of a preference for peace not war, of a desire for tranquillity. It is based on the ethos that if giving more to the other player creates the conditions for a happier **relationship** then it is better to save the relationship than risk it in competition for the 'largest slice'. In its extreme form a Blue style can become so unselfish as to be positively self-destructive: 'Whatever else happens, I wish you to have as much as you want, even if there is little left for me because whatever makes you happy makes me happy.'

It is possible to conceive of these contrasting styles by the more emotionally loaded terms competitive (Red) and collaborative (Blue). But emotionally loaded terms are not helpful when no moral judgement is implied, nor prescriptive preference intended. Neither Red nor Blue style is optimal; one **takes** at the expense of the other and the other **gives** to the singular benefit of the other; therefore neither is a preferred style.

From observation, negotiators in the main adopt combinations of Red and Blue styles according to their perceptions of how to do business. Some of this they learn for themselves, some from their mentors, but mostly they have not thought about their choices and if pushed they call it 'experience'.

Exercise 7D

Read the following statements and write down whether they indicate a Red or a Blue style. Then check with my answers given in Appendix 2 at the end of the book.

1 The man with money meets the man with experience; the man with the experience ends up with the money and the man with the money ends up with the experience.

2 What will it profit a man if he gains the whole world and loses his soul?

3 If you can't stand the heat, get out of the kitchen.

4 It's tough at the top.

5 If they want a price war, I'll show them what a low price means and we shall see who has the deepest pockets.

6 My word is my bond.

7 We are not in this venture for a quick buck.

8 Never give a sucker an even break.

9 Give me some of what I want, and I will give you some of what you want.

10 If they won't accept the force of argument then we shall see how they cope with the argument of force.

Those who play Red in round 1 of the Red–Blue game, do so because of their perceptions of how best to cope with risk – even in a game where the risk is obscure and the points have no intrinsic value. They seek to minimise their exposure to the behaviour of an unknown partner. Faced with the risk that the other player will play Red, they play Red to **protect** themselves ('I play Red not because I want to but because I must'). Some of those who play Red in round 1 do so because it is in their nature to **exploit** others ('I play red not because I must but because I want to'). These perceptions incline such people towards Red play in the game and Red style in negotiations. Those who play Blue in round 1 either minimise the risk of the other player playing Red or they assume that the benefits of playing Blue will become obvious over ten rounds (Mostly they are disappointed).

Business experience influences perceptions and behaviour. Small businesses are highly vulnerable to Red play by debtors. The Construction industry, for example, is overflowing with firms that went bust because the main contractor failed to pay them on time for the work they did, and not always for legitimate reasons. Ruthless Red style managers place sub-contracts with small firms at rock-bottom prices

without the slightest intention of paying them on time, or at all. They get the work done cheap, save on their cash flow and leave it to corporate lawyers to sort out afterwards. Red style small firm owners take on sub-contracts, skimp on everything they do (especially work 'below ground' or anything not easily inspected), pass fraudulent work dockets, and move on once paid before the main contractor discovers what they were up to (hence, even honest main contractors tend to delay payments!). One Red experience leads to another. To avoid being ripped off by ruthless sub-contractors, the main contractors inspect everything in case sub-contractors 'cut corners', build in latent defects and charge for work that requires re-doing. This can drive small firms into bankruptcy unless, that is, they can successfully skimp, etc! In this business sector, firms are notorious for opening 'claims files' immediately they are awarded a contract in anticipation of a battle over payments. Estimates of the additional cost of the Red–Red styles to construction projects range as high as 30 per cent.

Similar Red style cultures used to dominate in other business sectors. In the UK motor vehicle business one shop steward told John Benson, a long time negotiating colleague of mine, when he had just joined the labour relations department, fresh from university with a liberal perspective on the perfectibility of people, that the way the firm worked was simple: 'When you want cars, we screw you, and when you don't want cars, you screw us – all the rest is B….' This Red approach by both management and union stewards was accompanied by the inevitable rounds of strife in the car plant with the inevitable result: the plant was closed by its owners because of mounting losses – and when landing at Glasgow airport you fly over its derelict foundations.

Some companies celebrate their ability to avoid Red style behaviour. They approach their customers with what they consider to be the opposite of a Red style ('the customer is always right'), advocate long-term relationships and stress the importance of the customers' goodwill over short-term profits. Unfortunately, these claims are obtained more in the breach than in the practice. If you talk to their customers – and their staff – you get a different picture. Their selective style does not extend much beyond a few favoured large customers and certainly excludes their suppliers, and often is absent from their treatment of their employees. There may be little visible evidence of Red style in the marketing and sales departments but it is manifestly in abundant supply in purchasing.

Red style does not imply an absolute imperative to be overbearing and aggressive (though it does accommodate to such behaviour). The Red style negotiator is dominated by the motivation to 'win' at your expense but how that determination is expressed depends on many factors and can incorporate a wide range of behaviours. The Red player can be charmingly immovable on something as well as angrily dismissive of your rights to a fair share. Therefore do not judge a Red style solely on the basis of the tone of the negotiators; rely instead always on your judgement of the content of their proposals.

Openly Red stylists normally approach negotiation with manipulative intent, using ploys, bluffs and counter-bluffs. You will recognise Red styles in other negotiators by the extent to which they are aggressive, domineering, immovable,

devious and, in debate terms, bad mannered. Some Red stylists are typified by a bombastic and patronising manner which often hides a general weakness of intent or commitment. For some of these people their Redness is a sham, easily pulled apart by a firmness of purpose by an assertive conditional bargainer. One problem for the unthinking Red stylist is their proclivity to say, or rather shout, 'No' to everything before they have thought about it and this catches them out because their outrageous unreasonableness costs them their credibility and, if their bluff is called, their apparent strength is revealed to be a sham.

In some cases, the Red stylists are unaware of the negative impact their behaviour has on the other negotiator. This can be caused by inexperience or ignorance of the feelings of other people. But you can push people too far. The most difficult industrial disputes to settle are those between an aggrieved workforce that has had no experience of negotiations – they do not know how to compromise once they are worked up to the point of defiance – and domineering managements that have never chosen to compromise. It is also well attested by observation that a suppressed people let loose against their former oppressors can engage in violent acts that ignore any sense of proportionality.

But not all Red stylists are overt in their behaviour. Some are quietly resolute in furthering their own interests at your expense – and charming with it. They conceal the more obvious Red moves or behaviours and work away at your resolve with few signs of movement on their part – you move or remain in deadlock – and they rely on time or other pressures to produce the results they want. It is wise always to remember than Red style is not solely a set of behaviours. It is an intention to benefit at your expense and while Red behaviour may be hidden by plausible distractions, the content of a proposal is always subject to your analysis.

The extreme Blue stylist is a pitiful sight. So low is their self-esteem that they need desperately to be liked, even loved, by the other negotiator, and in pursuit of this goal they concede everything, even cringing in their self-effacement. Far from achieving the love or respect they crave, they often provoke contemptible feelings in the persons upon whom they shower their concessions.

The Blue stylist is as difficult to deal with as a Red stylist. For Red stylists generally exploit moderately behaved Blue stylists (there is a continuum of behaviours within both Red and Blue styles) and the best that can be done for this condition is to train them to be different.

Exercise 7E

What is your negotiating style? Given the information that you have on the differences between the styles, assess, frankly, your belief about your own style:

i. in your work or business relationships
ii. in your domestic relationships

using the continuum shown in Figure 7.5.

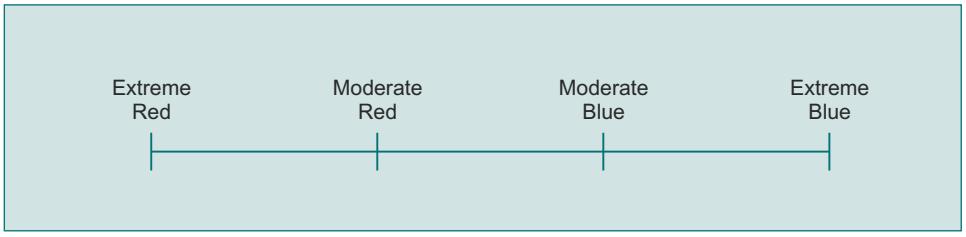


Figure 7.5 Red/Blue continuum

Observation of negotiations – and responses from negotiators at workshops – suggests that people have preferred styles for different situations. People switch styles between Red and Blue. Many people are fairly Red at work (unless they are in sales and promotion where a Blue style is trained into them – have you never heard of or recoiled from the 'smarmy salesperson'). They are more Red with subordinates and same level colleagues than they are with the upper reaches of their hierarchy (some people acquire a reputation for 'crawling' before, or, as the Americans put it, 'brown-nosing', their bosses, which is an extreme Blue style). Domestically, people tend to be blue but that depends on the state of their relationship, as the divorce and murder courts show.

Which style, Red or Blue, should you adopt? It is not much of a choice is it? Fortunately, there is an alternative that excludes the two on offer. Because neither Red nor Blue is optimal you need choose neither. Choose to be **Purple** instead!

This choice can best be illustrated by considering how the principle of **conditionality** derives from Red and Blue behaviours.

A proposal or a bargain consists of two elements, the condition and the offer. The **condition** states what I want and is in the form: 'give me the following'. It tells you what you have to do – what 'price' you have to 'pay' – for whatever you might want from me. It is my demand on you.

Let me ask you: 'how am I behaving if I merely **demand** something from you without offering anything in return?' By now you should recognise Red behaviour when you hear it because that is what it is – outright Red demanding behaviour. The condition, in other words, is my **Red** side.

The other element in a proposal or bargain is the **offer**, which tells you what I propose to give to you in return for meeting my condition and is in the form 'Then I will give you the following.' It is my offer to you.

Now answer the question: 'how am I behaving if I am willing to give you something without demanding something in return?' By now you will recognise Blue

behaviour immediately – outright Blue submissive behaviour. The offer is my **Blue** side.

Now, this perspective on the conditional proposal or bargain is much like consumption of sodium and chlorine. By themselves neither of these elements is good for you yet your body cannot function for long without them. Nature's harmless solution is to combine them in the form of salt. Likewise the conditional proposal or bargain combines Red demands with Blue offers because by themselves neither of these behaviours (demanding without giving or giving without demanding) is good for your negotiating effectiveness, yet together they are an assertive traded solution. In the form of the principle of conditionality they are the alternative to the sub-optimal behaviours of Red on its own or Blue on its own: 'If you meet my (Red) demands then I will make a (Blue) offer.'

Table 7.2

Condition	+	**Offer**
Your RED side	+	Your BLUE side
If you	+	Then I

This format specifies the exact nature of Purple negotiating behaviour: combine your Red side with your Blue side in assertive conditional proposals and bargains and do not let them be separated – ever!

7.5 The Difficult Negotiator

By difficult, I mean when a Blue style negotiator meets with a Red style negotiator and faces the problem of shifting the negotiations from competitive confrontation to collaborative joint problem-solving. To carry it out looks easier in theory than it is in practice. Yet it is one of the most common occurrences in negotiation, if only because we are always primed to believe that it is we who are being reasonable and they who are being difficult. I have never yet known a negotiator describe his behaviour as other than 'reasonable in the circumstances', which, of course, hides a great deal in the allusion to 'the circumstances'.

Our first approach to this problem will be to return to the Currency Game and then to the work of Robert Axelrod (*see* his *The Evolution of Co-operation* (1984) New York: Basic Books, and the many seminal articles he wrote that preceded it).

First, I have set out in a diagram the choices of styles and the consequences of those choices facing the negotiator – *see* Figure 7.6.

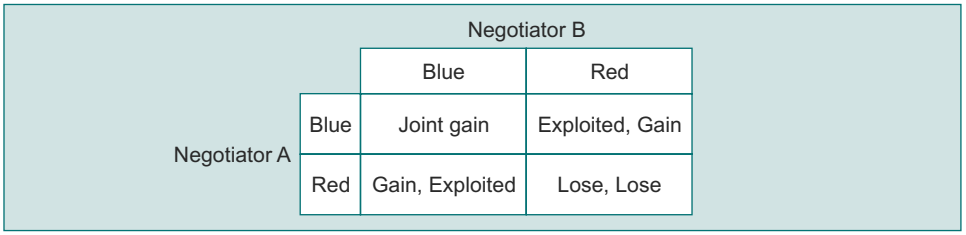


Figure 7.6 Choice of styles

Two negotiators who adopt Blue styles for their negotiation will make joint gains ('more means more'), but the quandary is that neither negotiator knows how the other intends to play it, and if they play Blue to the other's Red style they will be exploited. You will be exploited to the extent that you accept as true what the Red negotiator tells you (he bluffs etc.) and if you do not accept it as true you will be playing Red, perhaps to his Blue (he was not bluffing!). Thus, we return to the negotiator's dilemma: 'I play Red not because I want to but because I must'. With both negotiators playing Red they end up with a Lose, Lose outcome, defined as anything less than the potential joint gain they could have achieved by playing Blue, Blue.

Axelrod conducted a series of experiments using a computer version of Prisoner's Dilemma. He invited specialists from various disciplines to submit computer programs that would be run for repeated plays of the game. Each program was run against the others and the winner assessed on the number of points scored from each program from the tournament. The programs submitted were varied and some were exceedingly complex. The winner, however, was one of the simplest that could be written. It was called Tit-for-Tat (TFT) and it won outright the first tournament and the second, which had a larger number of entries.

Remember from the currency game, the players had a choice between co-operation or defection. Can you see the strategy that Player A is using in the game outlined in Table 7.3?

Table 7.3 Outline of currency game

Round	Player A	Player B
1	C	D
2	D	D
3	D	C
4	C	D
5	D	C
6	C	D
7	D	C
8	C	C

To see the strategy used by player A, draw a line from his first play to the corresponding play by player B (C, D), and then a line from player B's choice of play to

the **immediately following choice** of play by A, and then likewise down the eight rows.

Player A is playing a strategy that co-operates on the first move (play Blue in the Red or Blue game), and then plays in each subsequent move whatever his opponent plays in the previous move. Thus after round 1, player A plays D in round 2 because player B played D in round 1, he plays D in round 3 because player B played D in round 2, but he plays C in round 4 because player B played C in round 3, and so on. Interestingly, almost all people who study the list of plays correctly spot A's strategy by the seventh round – some by round 3 – which is encouraging at least to those using this strategy because it suggests that an average opponent will see your strategy fairly early on and, hopefully, adjust his play to gain from co-operation with you.

TFT as a strategy outplayed all the others in Axelrod's tournaments and from this Axelrod drew some important and suggestive conclusions.

Co-operation in round 1 and reward-punishment responses from then on appeared to gain over alternative strategies (many of which played randomly, or to a complicated formula that delayed a positive response), even though a TFT play occasionally lost out to a defection.

Some additional observations were made by Axelrod, including the need for the negotiator to be instantly forgiving and not to carry grudges. The latter would be represented by a strategy that required the initial Blue player to respond to a Blue play by his opponent, not immediately but some rounds later. This has the drawback that the reward (a Blue response) is separated from the action (a Blue play) and the connection between them is no longer obvious.

In simple experiments that I have conducted with negotiators, I have set out the plays of a modified TFT strategy with a separation of action and reward by alternating the reward to two or three rounds later, analogously to that outlined in Table 7.3, and have found that it takes over 20 rounds for *anybody* to recognise my strategy, and for most people there is a total failure to see any pattern at all after 30 plays, compared to only seven plays that are required for TFT. This suggests that complicated strategies are 'too clever by half' and fail to achieve their objective of persuading or training the other negotiator to understand your willingness to co-operate if he will.

While TFT was the best of those it ran against, it is by no means perfect, especially as we move outside the constraints of a Prisoner's Dilemma game. One problem from TFT is the danger that once a cycle of defections is initiated, the prospect of a Blue play by an opponent grows increasingly remote and, if one is played, it is likely to be so overladen with past grievances that an almighty effort would be required for a player to forgive instantly and respond. In short, protracted TFT in a defection mode degenerates into permanent Red play by both sides. Of course, this criticism must be tempered with the knowledge that alternative strategies are equally or more prone to degeneration.

Let us consider an example from industrial relations to illustrate the effect of TFT on a difficult Red situation.

Iain Thompson, a convenor of shop stewards at a large transport company, had a reputation for his aggressive, almost over the top, style of doing business with departmental managers. He was verbally abusive, physically dominant, and given to bullying any sign of weakness he perceived in a manager, especially anyone who preferred a 'quiet life'. Relations got so bad that Andrew Tyler, the General Manager, called a meeting of his departmental heads for a Saturday morning in a local hotel (he did not want to use company premises in case the meeting and its purpose leaked out). The one item on the agenda was how to deal with Mr Thompson.

The first hour and a half of the meeting was taken up by departmental war stories of the atrocities of Iain Thompson. These varied from fairly trivial incidents of exceedingly bad manners on his part to more serious disputes involving stoppages of work and intimidation of supervisors. After this session Andrew Tyler called for suggestions of what should be done. These were equally varied (and imaginative). They ranged from finding an excuse, or creating one, to sack him through to offering him a large bribe and an excellent reference to transfer to another division of the company (which, it transpired, was how he arrived in this division, complete with a glowing reference). Other (not serious!) suggestions about having him run over by one of the company's trucks lightened the session (things were bad but not that bad!).

At this point, Tyler called on a consultant, who had sat through the meeting listening to what had been said, to make some observations. His first activity was to get every one of the managers present to play the Red or Blue game. The ranges of scores achieved by the 12 pairs of managers were slightly worse than normal, in that the majority had low negative scores and nobody had a positive score greater than 24, indicating a fairly Red culture.

The next thing he did was to draw up a table, an extract of which is set out in Table 7.4. This focused on some key behaviours and the managers' responses to them as detailed in the first session of the meeting.

Table 7.4 **How Thompson is currently handled and how he should be in future**

Thompson acts	Manager reacts	Recommended future reactions
Speaks louder	Shouts	Speak softer
Speaks fast	Speaks faster	Slow down
Interrupts	Interrupts interruptions	Give way
Swears	Swears back	Never swear
Threatens	Counter-threatens	Ignore

The first two columns in Table 7.4 show what was happening in the main at present. When Thompson spoke he did so loudly and managers responded by speaking even more loudly until they were both shouting at each other. They spoke fast to pre-empt interruptions but ended up interrupting their

own interruptions. Thompson had a gifted tongue for swearing – he could get swear words inserted within another swear word – and this brought out the worst in the managers. Frustration led to threats and counter-threats and many needless disputes as each side felt obliged to show how tough it could be.

In column three, the consultant listed the reactions that the managers should use in the future for a trial period of three months. He suggested that the managers should always aim to speak a little, but preferably a lot, quieter than Thompson at all times and to speak more slowly. This would leave them vulnerable to interruptions from Thompson but they should always give way when interrupted, listen out what he said, and then recommence (and give way if necessary if he interrupted again). Swearing should be avoided – 'we only swear at our friends' said the consultant – and Thompson should be treated with respect in every way and on every occasion. All threats should be ignored and no comment should ever be made on the consequences of his carrying out one of his threats, no matter how outrageous it was in terms of agreed procedure.

In order to support the managers, an exercise in active listening was undertaken, for it was essential, claimed the consultant, that they listened to what Thompson said and got a clear picture of what made him tick.

Three months later a similar meeting was held – this time on company premises – and the managers reported back what they had done. The picture was a bit messy. Of the 24 managers, only 11 had managed to carry out the assignment consistently over the three months, and another six claimed to have used the methods occasionally. The remaining 7 managers said it was hopeless and Thompson would have to go one way or another.

Interestingly, of the seven who had given up from the beginning, four of them had high positive scores greater than their opponents in the Red–Blue dilemma game (the consultant had kept the score sheets for analysis), and two had scores that were greater than 36. This suggests that these managers were predominantly disposed to Red styles of play, including outright defection. Of those who had continued with the assignment, nine had negative scores in the Red–Blue dilemma game, and one of them had scored the highest negative score (−64) of the group, indicating that they were 'victims' of Red style defections.

For the minority, it was business as usual with Thompson. But for the others they had some interesting things to report. Relations had distinctly improved and while Thompson was never going to become a tame pussycat (never an objective of this sort of exercise) he was easier to handle. As one manager put it, to much laughter in view of his unintended pun: 'When you listen to what Thompson has to say, he comes out with some rather Blue remarks.' This was generally agreed.

Thompson demanded things from the ridiculous to the justifiable (though mainly the former). But by addressing the demands that were justified, managers reported that the stress of previous meetings was avoided and the

employees whom Thompson represented – 'my long-suffering members' was his catchphrase – were less prone to harass their supervisors, who in turn were less likely to complain to the managers. When, for example, Thompson angrily demanded that the toilets in one of the garages should be cleaned up immediately because of their dreadful condition, the manager immediately inspected them and agreed with Thompson about their condition and ordered that they be cleaned and replumbed forthwith. Thompson on this occasion was believed to have uttered the very first 'thank you' anybody could remember, though, typically he half spoiled it by adding 'about bloody time, too'!

The management were on their way to changing a stress dominated relationship with a Red stylist towards a more Purple relationship – responding when the Red stylist played Blue with a Blue and remaining Red when he played a Red. Over time, it was hoped that Purple play – with a Blue tinge! – would predominate in their relationship.

It might therefore be useful to tie together some general advice on how to handle a difficult negotiator. First, you must separate people who are difficult only with you from those who cause problems for everyone. It might be you that is the cause of the difficulty and not them. What are you contributing to the difficulty of the relationship? What have you done, or been perceived to have done? Whatever it is, you had better put it right.

Some people, however, are deliberately difficult because they have found that their behaviour usually produces what they want. For them there is a direct connection between their behaviour and the outcomes they seek. Their behaviour intimidates their 'victims' into submission and where it does not have this effect we get the kind of problem represented by the Thompson situation – bitter contests of will, much stress and tension and a totally Red–Red manner from both him and the managers. Dealing with these types of difficult negotiators sometimes prompts a debate on whether to match or contrast their behaviour. By matching I mean responding in kind – the way managers reacted to Thompson – by going Red on Red with him. By contrasting I mean responding in a different way – by going Blue on his Red.

The debate between matching and contrasting is inconclusive. The problem with matching Red to Red is that this often provokes an escalation in tempers which can get out of hand. After a couple of rounds it is impossible to settle on who started the Red style contest. Once into a Red style cycle what do you do next? Matching also suffers from an inherent defect in that from the Red style's point of view, Blue responses to his behaviour signify that his Red style is working and that you are about to submit. What happens if you don't?

The choices of matching or contrasting look like another dilemma because neither response answers the key question of what you are supposed to do next. The clue to the answer lies in what outcome the difficult negotiator is seeking from his behaviour – he intends that you will submit. Hence, your tactical aim is to deprive him of that purpose by disconnecting his behaviour from the outcome.

The response to all forms of difficult behaviour can be summed up in the statement that 'your behaviour will not affect the outcome'. Whether you express this statement directly to the difficult negotiator must depend upon the circumstances, but you certainly must articulate its meaning to yourself in all circumstances. Let it become your mantra!

By disconnecting his behaviour from the outcome you will also cease to make his behaviour an issue – how he chooses to behave is his business not yours. Hence, all temptations to advise him on how to behave must be resisted. Statements like there will be no negotiations until 'he changes his manners' or until the 'union is back into procedure' and so on, are a waste of time and re-connect the behaviour with the outcome. Realising that his behaviour is not going to influence the outcome – you are not going to submit to it – does more to change his behaviour than confronting the behaviour directly. Hence, in the Thompson case, the recommendations for future reactions did not in any way allude to him changing how he behaved – they only determined how the negotiators across the table from Thompson were to behave.

In the UK we constantly watch government spokespeople and employers fall into the trap of reinforcing the behaviour of difficult negotiators, though, no doubt, they feel they are undermining it. A strike takes place, for example, and government spokespeople queue up to tell the media just how 'damaging' the strike is to the country and to the strikers. They appear to think that the strikers – behaving in just about as difficult a way as they can – will heed these warnings and return to normal working. They have the opposite effect. The strikers interpret the warnings of the 'damage' they are doing as confirmation that their behaviour is having some effect: 'If our strike is causing these important people to notice what we are doing and to inform us of the damaging effects of our actions, then we must be doing the right things to get our grievances addressed'. This usually prompts the pseudo game of passing the blame and responsibility for the alleged damage of the strike to the other side: 'Increase our wages and we will stop striking and if you don't do this then you are to blame for the damages caused by the strike'.

However, if the spokespeople were to shut up about the strike itself and were to concentrate instead on the disputed issues, they would weaken the commitment of the strikers to persisting with their actions. Keeping workers on strike is a difficult task for the union and it must continually reinforce the employees' solidarity with assurances that their actions are having an effect, in order to stop erosion of support for strike action among the employees. Strikes can crumble quickly when their actions have no perceived effects.

Employers who agreed with their employees that they had a right to go on strike but that their strike would not affect the outcome would fare better in these disputes than employers who attack workers' rights to strike and also tell them how effective their strike is by the 'damage' it is doing.

Likewise, with difficult negotiators. Letting them know how effective their behaviour is by showing how much it upsets you only reinforces their behaviour – 'if my manner hurts you the remedy is in your hands – give me what I want and I will stop bullying you'.

This still leaves us with answering the question about what to do next. Providing the first part of the strategy is in place and working – disconnect their behaviour from the outcome – the second part can be deployed. This requires you to assert – at all and every opportunity, if needs be – that the only way in which the outcome will be determined is by either the merits of the case they have or by the principle of trading (and, of course, some combination of them both).

This is where a toughness of resolve is necessary. For the typical difficult negotiator toughness is an attribute of their aggressive and bullying Red style behaviour. For the Purple negotiator, toughness is one of inner strength and determination that they won't be bullied into submission, nor will they accede to any determination of the outcome other than the twin principles of the merits of the case or of trading ('you will get absolutely nothing from me, unless and until I get something from you in exchange'). Toughness comes from resolve not abuse.

In the Thompson case of the soiled toilets, the issue was decided by the merits of the case (the toilets were soiled) and not Thompson's rude and ignorant manners, which the manager ignored.

In another Thompson case reported at the follow-up workshop, we heard of an example of applying the principle of trading. Thompson had barged into a manager's office with a demand that the depot was closed on Saturday so that his 'long-suffering members' could attend a cup tie featuring the local football team. They would come in on Sunday at 'double time' and clear all deliveries. The manager said 'no' on the grounds that he saw no merits in Thompson's case – it was unlikely that the majority of the 120 drivers would want to go to the cup tie because many other teams were supported in the depot, plus a large minority did not follow the game, and that working on Sunday would not be feasible because many customers were closed on Sunday and could not receive the deliveries they expected on Saturday. He suggested, however, that he was prepared to pay the men for a full Saturday shift if they completed all the day's deliveries by 12 noon, which allowed those who wanted to go to the cup tie to do so and everybody else to do whatever they wanted, but nobody was going to work on Sunday. Thompson went off muttering about this 'miserable' offer and called a meeting of the drivers. They listened to Thompson's report of the manager's offer and his recommendation of a walk-out and promptly voted to accept the manager's offer, much to the consternation of Thompson.

7.6 Making Progress with a Purple style in a Red Negotiation

The Purple stylist places an emphasis on what he wants to do rather than justifying what he feels he must do. Faced with a negotiator's dilemma he manages it by dividing the difficulties of choice into smaller manageable risks. Instead of a single choice, as in the original game of Prisoner's Dilemma, of co-operate or defect, which decides the final outcome, the Purple stylist breaks up the process into numerous little games of Prisoner's dilemma. The single play game becomes an iterative game played over a sequence. Think back to the contrasting games played by Dan and Rodney. For Dan it was all or nothing as his £50 went on the block once and for all. Rodney turned the game into £10 a time. The purple stylist is

closer to Rodney (preferably £1 a time until he establishes the game played by the other negotiator) than to Dan. He takes measured risks that help judge the Red or Blue intentions or proclivities of other negotiators and which also train them to play Purple because each exchange demonstrates the benefits of conditional exchanges.

The debate phase plays a significant role in determining the other negotiators' games. If they are arguing, a Red game is under way and caution is advised. To open with a joint problem solving approach – such as by revealing one's vulnerabilities to the pressures of deadlines or cash flow shortages – could be dangerous. The determined Red negotiator always exploits the too open Blue negotiator. The Red player's response to openness is to exploit what is seen to be a weakness. A deadline revealed is one that is run up to: 'We'll have to wait until our accountants report' and cash flow shortages are exploited: 'I am sorry but cash advances are out of the question'. The intention is to increase the pressure to force submission to onerous Red terms.

Given that the debate phase is a series of exchanges across a wide range of topics, there are plenty of opportunities to test the nature of the game played by the other side and to take measured risks that do not expose you to sudden-death exploitation. On each topic the negotiator must listen to what is being said and must ask questions that probe for information both about the issue and about the intentions of the other negotiator. How the negotiator answers – if at all! – tells you something about the game being played. A refusal to disclose information can send warning signals to you immediately and the tragedy is that the signals may be clear but the cause of them may not be justified.

Nabwood Software were subcontracted to debug a pilot simulator for the Yashid Airforce. They were given the job at extremely short notice by the manufacturer of the simulator to meet a deadline caused by the earlier than planned visit of the Yashid authorities to the plant to have the simulator demonstrated. Faced with the client's deadline and the purchase order stamped in Red over it 'Priority One' (the highest level of urgency in the business), Nabwood withdrew staff from other projects, set up a 24-hour shift system, hired two specialist programmers, and reserved large time-shares on their mainframes to the exclusion of other work. When they completed the debugging on time and submitted their account, they were astonished to find that the invoice was challenged, on the grounds, it was claimed by the manufacturer, that the invoice exceeded their budget for the debugging by 300 per cent.

Nabwood and the manufacturer's purchasing department met to discuss the problem. Things went from bad to worse. The Nabwood people were adamant that they had behaved impeccably in meeting the customer's deadline and successfully debugging the simulator (the Yashid visit was a great success too). They resented strongly the implication that they were cheating by padding their account. They referred vaguely to the additional charges they had incurred and to the reassignment of personnel to the work. They did not go into details about the internal charges they had incurred in

the substantial use of the mainframe computer, the consultants they had hired and the royalties they had to pay for using somebody else's unique software.

And that was the nub of the problem. They added to an already Red situation, caused by one side believing they had been ripped off and the other that their integrity was impugned by the implication that they cheated their customers, by being vague about their excellent case for full payment. Nabwood's failure to be open with the details of their costings – they felt that the mere reference to them ought to be sufficient – only excited the fears of the manufacturer's people that they were being taken for a ride by a supplier. Their evident scepticism further fuelled Nabwood's sense of indignation. Within short measure, both were muttering about litigation.

Red behaviour can arise from a misunderstanding as well as from the situation. When the negotiator is sending Red signals inadvertently, he can correct this mistake by taking a measured risk:

> Are you saying that it is the lack of information that is causing you to consider cancelling the contract?
> Yes.
> Can I take it that if I supply you with the information that you require and that if this information establishes to your satisfaction that we have made a legitimate claim for our services, that you will accept this information on a commercial-in-confidence basis and will pass our account, or that proportion of it that you agree is justified, for payment?

Dependent upon the answer, the negotiator will know what game they are playing. If they say 'No', and assuming they have understood the contents of the question (which is perhaps worth testing), you know that their Red stance has some other motivation (which is perhaps worth questioning too); if they say 'Yes', you know that your disclosure of information is a potential means of solving the dispute. Whether it does would depend largely on whether your figures will stand examination. If they do not, then your own Red stance is explained by your customer catching you out in a padded fiddle.

All the activities summarised by 'SAQSS' (*see* Module 4 – Statements, Assurance, Questions, Summaries and Signals) are measured risk Blue behaviours. None of them are sudden-death risks. If you make a signal and get it shot down ('Ah, so we have been wasting time listening to your protesting that you cannot meet this deadline and now you suggest that it might be possible!'), you do not lose everything or even anything. The Red rejection of the signal tells you that it is not safe for the moment to make an overt advance along the lines you suggested. You could return to making a statement explaining your motives in trying to move towards a solution, perhaps summarising where you have both got to in your respective statements of positions or attitudes, and await a response from them. They might respond along the lines of: 'Oh, I see, OK, well go on, I'll listen to what you have to say', in which case you can make a tentative – very tentative – proposal; or 'That's as maybe, but if you think we are shifting from our deadlines to suit your convenience, you must

think we are daft', in which case you do not propose anything and you will have to endure some unpleasant Red style argument until an opening occurs through which you might try another signal, or, if you are listening carefully to what they are saying – listening is always Blue behaviour – you could respond positively to a signal from them (remember Thompson?).

Negotiations tend to concentrate on issues and the positions people hold on the issues. A wage rate is an **issue**, £20 an hour is a **position**. People also have interests. An adequate standard of living is an **interest**. These can be set out as follows:

Interests – overriding motivator – why somebody wants something
Issues – agenda item – what they want
Positions – focus of stance on the issue

The bitterest of disputes often concentrate on positions but the stances people take are driven by their interests. A union announces the minimum wage it intends to get and publicly commits itself and its prestige to attaining that figure. Given that its prestige is an interest, it finds itself unable to shift from its position, and it digs in for a long and mutually damaging dispute.

Many Red behaviours actually make it difficult to reach a settlement because they offend the interests of the other party. A Red ploy of 'take-it-or-leave-it' on a position or an issue, for example, can provoke resistance, even where the negotiator is willing to consider accepting the offer, because the way the offer was presented compromises the sense of dignity in the negotiator.

Purple negotiators seek to identify the interests of the other side – and to be candid about their own – if only to assist them in addressing issues and in shifting positions. They have to be careful here because identifying somebody else's interest and then making it public has the pitfall of announcing (or more usually denouncing) the alleged motives of somebody else. It is important, however, to attempt to identify interests, if only for personal consideration. They are the drivers of negotiators to, or off, positions. They may work on the surface or off it, and they may be understood and acknowledged by the other negotiator, or remain subconscious.

Understanding the role of an interest can move a negotiation towards an agreement. In the surrender talks – via the radio telephone – between the British and Argentinian commanders, just before the fall of Port Stanley in the Falklands/Malvinas war, the Argentinians, whose military position was hopeless, nevertheless bravely stood out for a condition before they would agree to a surrender. The Argentinian commander insisted that there would be no photographs taken at the signing of the surrender document. This was a fundamental interest to him and his country, which had been humiliated, in his eyes, by the photographs of an Argentinian general signing a surrender document on the South Georgia islands some weeks before. National pride was at stake on the Argentinian side, and further casualties, perhaps putting at risk the British subjects trapped in Port Stanley from a final assault, were at stake on the British side. If agreeing to no photographs would terminate the war immediately – a British interest because they had almost no artillery shells left – the British would agree to no photographs – an Argentinian interest (and none have appeared in the public domain, so far). By way of comparison, the British side insisted that the Argentines surrender formally to the

Commander of the Royal Marine Commando, who had been 'humiliated' by photographs of him and his men in prone positions after their surrender several months earlier to the invading Argentine forces.

Dependent upon the circumstances, a Purple negotiator could choose to avoid publicly identifying the interests of other negotiators, though this does not preclude, and must not preclude, identifying their interests in order to understand their commitments to positions and issues. Take a negotiation between two parties who have a record of tensions, or worse, between them. It may not pay dividends to reveal interests or to address them. Allowing for the expression of ideological differences can be fraught with danger (for the prospects of a negotiated settlement) if brought out into the open.

It is much more productive, for example, to concentrate on substantive issues in a negotiation than to raise questions about 'evil regimes', dominating or evil as they may have been in earlier years.

No negotiated solution will ever be found to the problems of Northern Ireland that is conditional upon an early reconciliation between the interests of the Roman Catholic Church and that of the Protestant Churches of Ulster. That they might one day live in peace (hopefully) may be probable, but this is likely to come from both sides ignoring their theological and political differences and their general interests (coping with declining church members, for example, in which they are competitive and feel threatened by the existence and special privileges of the other) and concentrating, instead, on a step-by-step process that deals with issues and positions: what are the precise details of a measure of power-sharing that are acceptable to the majority (Protestant) and minority (Catholic) communities of Northern Ireland?

The broad principle for the Purple negotiator is to concentrate on reconciling issues and positions when the interests of each party are effectively incompatible (as when ideological, religious, racial standards of conduct or governmental differences are too wide), and to concentrate on reconciling interests when the issues and positions are effectively incompatible (as with fixed amounts of territory, money and resources which cannot be split satisfactorily). Neither approach necessarily permanently precludes the other, because, in due course, by following one route the prospect opens up of moving onto the other routes. By sorting out trading details between two irreconcilable political systems, for example, we create the long-term contact that can lead to a peaceful ideological shift, which was the experience of the 40-year long conflict between the communist East and the capitalist West, and that between the white supremacist minority and the black majority South Africa.

A divide between secular and religious citizens is an example of how, by concentrating on the interests of the rival lifestyles, they end in a deadlock. You cannot reconcile the two lifestyles by expecting one or other to give up its preferences for its rival's. Instead, negotiations should concentrate on the substantive issues and positions – how to 'live and let live' – for be sure that attempts for one side to triumph over the other will lead to much unpleasantness for both sides and, perhaps, a total collapse of life as they presently know it. The fateful events in Bosnia stand as a stark warning to denying this advice in pursuit of 'victory' for one over the other.

Purple negotiators are aware of the linkage between agendas dominated by any, or all, of interests, issues and positions. They choose to switch between them to suit the circumstances in pursuit of an agreement. They have to be aware of the dangers of concentrating on one to the exclusion of another. When absolutely stuck in a positional confrontation, they can choose to move to look at broader issues (a trade-off, perhaps?) or to examine the interests that lie behind the other negotiator's (and their own) dogged persistence with their current positions.

But there are dangers for negotiators, which if not controlled, can lead them into serious mistakes. They can be fixated by the high sounding rhetoric, of the general interest and forget the implications for the lower-level implementation of the details that flow from the rhetoric. This is a tactic which works whenever the negotiators take their eyes off the ball and get bamboozled with high sounding rhetoric and then find themselves in no position to defeat detailed proposals that are slipped under the rhetoric.

An example springs to mind. It goes back to the early days of the Castro regime and his handling of some disputes with Cuban electricity workers. Briefly, the electricity workers, through their trade union, were politically involved with the new regime but were outside its formal structures. They held some mass meetings to protest – from a left perspective – about some aspects of the political agenda that Castro was adopting. He met with the workers and berated them for dealing with the politics of the regime and told them that they and their union should concentrate their attention on the details of the revolution, such as their hours of work and their wages, and not its political agenda. Some time later, the workers, through their union, were agitating for better wages and conditions, and Castro again met with them. This time he berated them for their attention to the minutiae of their daily work and for not spending more time on the broader issues of the revolution, such as its survival. By switching from the general to the particular and back again Castro effectively defused nascent opposition – of course, in a democracy, his inconsistency would have been exposed by a free press and taken advantage of by the opposition.

Purple negotiators may also protect their negotiating stances by adopting measures that **test** the other negotiator's intentions. Ostensibly, testing the integrity of another negotiator is a Red act and this might seem odd behaviour for a Purple stylist, but it is not part of a negotiator's skills to confine himself exclusively and wholly to the Purple end of the spectrum. The purpose of the Purple negotiator using a Red test is to allow the other negotiator to reveal whether he is playing Red or Blue. It is not to exploit him, which would be the intention and outcome if a Red player adopted these tactics, but to clear him of suspicion of trying to exploit the Blue player. If he passes the test, the Purple player can adopt a Purple response by doing what he wants, i.e. make a deal, and not what he must, i.e. play Red; if he does not pass the test the Purple player avoids being exploited.

Consider the case of two consultancies negotiating over a joint venture that would bring their expertise together for a special event.

Snale, Shover and Snodgrass, civil engineers, had entered discussions with Negotiate Ltd on the prospects of their jointly presenting a one-day seminar

on the vexed question of securing payment for work done by subcontractors in the construction industry. The commercial prospects of the seminar looked good, though there is always a risk in such ventures that the market will not take up the places and that the marketing and other set-up costs will be lost. The principals at Snale, Shover and Snodgrass were impressed with the public reputation of Negotiate Ltd and considered that their involvement would greatly assist them in making the seminar a financial success.

When it came down to details, Negotiate Ltd was asked how much they would charge to present a half-day of the seminar. They did their calculations and decided that they would set a fixed fee of £800, plus £25 per person who attended, which they did not consider particularly onerous a charge. This gave them a base-line income no matter how few attended and an extra income if the seminar was so successful that it was a sell-out. On an expected turnout of 100 people at £100 a person, this left a great deal to Snale, Shover and Snodgrass.

Negotiate Ltd were informed by letter that their proposal was unacceptable as it left too little net revenue to Snale, Shover and Snodgrass after they had met their marketing, administration and other costs. For Negotiate Ltd the question boiled down to whether this was a test of their resolve in a distributive bargain over the negotiator's surplus or whether it was an attempt to get Negotiate Ltd's unique services in this field on the cheap. Were Snale, Shover and Snodgrass playing Blue (they had a genuine problem with their net fee), or were they playing Red (bluffing to force down Negotiate Ltd's share of the net proceeds)?

Dropping the fee was no answer to the problem (and what then could Negotiate Ltd teach hard-bitten construction claims' officers if they dropped a fee on the basis solely that they were asked to do so?). They decided instead to test the colour of Snale, Shover and Snodgrass by writing back to them and offering them the following deal:

> **Negotiate Ltd will undertake the marketing of the seminar, will bear all the administration and other costs and will confine its fee to the net returns after Snale, Shover and Snodgrass are paid an £800 fixed fee plus £25 per participant.**

In short, Negotiate Ltd offered to Snale, Shover and Snodgrass the very same deal that they had asked for. This obviously caused some consternation because it took two weeks for a reply to arrive. The reply consisted of a terse rejection of the offered deal and a withdrawal from further consideration of a joint venture.

Exercise 7F

What did Snale, Shover and Snodgrass reveal about their game by rejecting the offer from Negotiate Ltd? Consider your own response to this question before reading on.

They were clearly playing a Red game. If Negotiate's first fee was too high and left Snale, Shover and Snodgrass with too little, then being offered the reverse deal, i.e. Negotiate's first fee, and avoiding all the costs of the seminar, must leave them better off – unless, that is, Snale, Shover and Snodgrass's stance on Negotiate's fee was a ploy. By testing their erstwhile partners, Negotiate discovered what they were up to, which was to force down Negotiate's fee to gain more of the net income for Snale, Shover and Snodgrass.

Similar tests can be applied by Purple negotiators to what they suspect are Red style bluffs (or worse). Take the case of the person selling a business with a profit forecast that suggests that it is worth in excess of £10 million (based on a formula of the price being eight times audited net profit). How do we test the accuracy of the forecast? By suggesting a contingency element in the price package. If the business reaches its forecasted profit over the next three years, then the price will be £X; if it does not it will be £X – *n* million. How the seller reacts to the proposal could reveal what game he is playing. If the seller rejects the principle of a contingency price out of hand you might want to reconsider doing business with him; if he haggles over the value of n, then it might be safe to assume that he is fairly sure of his forecasts but that they need revising downwards; if he agrees to a contingency without a quibble he must be pretty certain of his forecasts. Similar tests are common with delivery dates and for performance standards (with penalties for failing to meet them).

Epilogue

The dilemma of trust in negotiation is ubiquitous. If you are too trusting you risk exploitation (C,D; D,C); if you are not trusting enough you risk a second-best outcome (D,D is always worse than C,C). Coping with distrust and building it into trust is a strategic aim of the Purple negotiator.

The prevalence of Red style negotiation reflects the way most people cope with distrust. For the effective negotiator, however, rising above distrust, even with a hard-line Red stylist is an essential skill, learned through a combination of insight and practice. The Purple stylist understands what the Red player is up to (a Red ploy recognised is a ploy disarmed) and can indulge in some controlled 'Red' behaviour to send a signal or to test the intentions of the other negotiator. Hence, I favour the colour Purple as the best description of the style of the effective negotiator.

A printed contract is the written expression of the distrust each partner has of the other. In some contexts it is a highly Red instrument (what else is the injunction to 'read the small print' but the cry of a Blue player at what he had discovered he had agreed to?). Those contracts with wide-ranging exclusion clauses that protect one party to the prejudice of the other are examples of Red instruments. In Japan, the presentation of a highly detailed contract at the start of negotiations to establish

a joint venture arouses alarming levels of suspicion in the Japanese negotiators and their superiors. The over detailed contract says that you do not trust them. They believe in establishing the nature of their relationship with you before they set about discussing a contract, and even then they regard it as a guide rather than a bible.

In other contexts, a contract is a useful test of somebody's intentions. If they are willing to sign the contract, then they are willing to be bound by the written obligations and promises they made in the negotiation. If they are unwilling to sign a contract then they are not to be trusted at all. However, if you insist on a contract, you might cause offence by making them think that you do not trust them!

How you handle these paradoxes and dilemmas is a matter of personal experience and proclivity to a behavioural style. For some people you would not take a small order unless it was accompanied by an official purchase order, signed by a senior manager; for others you would willingly undertake substantial expenditure without a written contract and solely on the word of the person you have dealt with for many years. How to tell the sharks from the dolphins is not made any easier by acting upon what they tell you about their natures. Trust is based on what people do and have done, not what they say they will do.

While considerable evidence can be assembled to show that Red style negotiating behaviour has paid off handsomely for some highly skilled practitioners of the style, being Red for most people is a short-term advantage. The longer term pay-off is pretty poor from a monolithic application of Red styles to negotiations.

People, when they can, exact revenge for previous Red play against them. They also blacken your name to many more people if they feel aggrieved at their treatment. Deals that are based on fraud, or heavy manipulation of the negotiators, soon fall apart at the first loophole they can find in the contract. Remember how the people at Phoenix were discussing how to get out of a poorly drafted contract they had with Pascoe in Module 1? Similar meetings are a daily occurrence somewhere in business.

The Purple negotiator, who constantly strives to move the negotiations over towards the exchange of conditional proposals, is strategically sound over the long run. He is handling distrust by building small pockets of trust through taking measured risks on myriads of smaller topics in the debate phase (every minute of debate provides opportunities to build small elements of trust). As he instils in the negotiations the tone of seeking a settlement, of not bowing to Red pressure tactics, of being creative in addressing the inhibitions and concerns of the other negotiator and assertively seeking similar attention to his own inhibitions, of being willing to switch from positions and issues to interests, and vice versa, and of being positive rather than negative in all aspects of the obstacles to a deal, he is laying a solid foundation for an endurable settlement that both sides can be happy with and be willing to implement.

Module 8

Rational Bargaining?

Contents

Prologue

8.1 Bill and Jack

Two young brothers, Bill and Jack, want to exchange some of their possessions and they want to do this without the kind of argument they had last time, when it ended in tears with Jack telling his mother that his elder brother had bullied him into giving away much more than he got in return. As before, they had no money through which to conduct the exchange. They asked their elder sister, Louise, for advice, after Bill had objected to Jack's suggestion that they ask Mother to supervise the swap (Bill suspected that she would be biased in favour of his younger brother). Louise was keen to give her advice, if only to stop the usual arguments that would otherwise interrupt her MBA studies that afternoon.

Louise told Bill and Jack to bring those possessions that they were considering swapping to her room. They returned with nine items, five of which belonged to Bill and four belonged to Jack. Bill's possessions consisted of a book, a whip, a ball, a bat and a box; and Jack's consisted of a pen, a toy, a knife and a hat.

Louise gave each of them a piece of paper and a pencil and asked both of them to rank all nine of the items in the order of importance of the items for himself. She suggested that they could think of the items as being of high

importance, medium importance or low importance. With some obvious indecision, requests to remind them of what high, medium and low meant, and a few scorings out, Bill and Jack undertook this task reasonably quietly. Louise took the lists from each of them and copied them out onto a flip chart beside her table. Her combined lists looked like this:

Table 8.1 Louise's flip chart list

Bill's possessions	Value to Bill	Value to Jack
box	medium	low
book	low	medium
whip	low	low
ball	low	low
bat	low	low
Jack's possessions		
pen	high	low
toy	medium	low
knife	medium	low
hat	low	low

Bill and Jack, though somewhat puzzled by Louise's list, waited expectantly. It was not yet obvious how they would swap their possessions. Intuitively, they both knew which of the other's possessions they wanted and they both wanted to be better off as a result of the swap, but they had no idea what to do next.

After some thought, Louise announced she knew what possessions her brothers should swap and, as she spoke, she picked up some possessions from Bill's set and moved them to Jack's and moved some of Jack's possessions over to Bill's set.

When she had finished transferring items between the two sets, Bill had 'swapped' his book, whip, ball and bat for Jack's pen, toy and knife.

The boys appeared to be satisfied with the exchange and went off to their own rooms with their new sets of possessions, leaving Louise to get on with her MBA elective on negotiating.

Exercise 8A

1 What planning tool did Louise use?

2 What negotiating principle was she applying to the transaction?

3 From the limited information given to Louise, can you explain her selection of the items to be swapped?

Dialogue

8.2 Nash and the Bargaining Problem

Economists, for more than a century fully understood how markets set prices, but how bargainers set their prices remained for many years an irritatingly grey area. It was known as the bargaining problem. John Nash responded to the challenge in 1950 and his work initiated a whole avalanche of research contributions to the mathematics of bargaining theory. (He was awarded the Nobel Prize for economics in 1983.)

Nash asserted that the economic situations of monopoly versus monopsony, of trading between two nations, and of negotiation between employers and labour unions, are bargaining not market pricing problems. He then made certain idealising assumptions in order to determine the amount of satisfaction each individual bargainer could expect to get from a bargained exchange.

Nash's solution to the bargaining problem is not about defining negotiation as a process nor explaining why and how people negotiate. It is about what makes one particular solution better than all of the other potential solutions. The bargaining problem is not as easy to solve as at first it looks, so let me assure you that this topic is vitally important to anybody interested in negotiation.

You negotiate because it makes you in some sense better off. Given that you volunteer to accept or not accept the final deal, it follows that if you accept the deal you believe that you are in some way better off than if you reject it. What is true for you must be true for the other negotiator, so it is fair to conclude that you both negotiate because you both expect to gain something over what you have before your bargain.

Briefly put, the Nash bargaining problem is not about how you arrive at a solution – it is solely about the content of the solution. This leaves the problem of *how* to arrive at a solution unaddressed and, therefore, unsolved by Nash.

For those not exposed to economic theory, Nash's assumptions seem naive compared with the circumstances commonly found in real world bargaining processes. Nash, for instance, assumes:

- highly rational bargainers who can accurately compare each other's desires for various things;

- bargainers who have equal 'bargaining skills';
- bargainers who have full knowledge of the tastes and preferences of the other;
- bargainers who desire to maximise their gains in bargaining.

His model of bargaining uses numerical utility theory, which is an economist's way of 'measuring' the satisfaction, however defined, that an individual receives from possessing this or that set of goods. Nash, fortunately, provided an arithmetical example to demonstrate his solution. He refers to Bill and Jack, though they are not brothers, nor do they have a convenient adjudicator (their elder sister, Louise). That was my device to introduce you to the Nash solution.

Before trading, Bill and Jack enjoy various numerical utilities from their possessions (*see* Table 8.2).

Table 8.2 Utilities before trading

Bill's possessions	**Utility for Bill**	**Utility for Jack if acquired**
box	4	1
book	2	4
whip	2	2
ball	2	2
bat	2	2
	12	
Jack's possessions	**Utility for Jack**	**Utility for Bill if acquired**
pen	1	10
toy	1	4
knife	2	6
hat	2	2
	6	

It is the differences in their priorities or valuations that enable Bill and Jack to solve their exchange problem. Because each of them wants something from the other, they can find mutually acceptable terms for the trade. The main difference between being in a negotiating process and defining a Nash solution, is that the former have to work through a process to arrive at a solution, while Nash bargainers find the optimal solution without enduring the uncertainties of working through a process.

What I suggest we do is combine what we know about the negotiating process with what Nash solved almost 50 years ago. First, recall that in trading you exchange things that you value less (lower priorities) for things that you value more (higher priorities).

Now ponder the arithmetical example used by Nash to illustrate his solution. By putting his arithmetical example into a Negotek® PREP format, you can see directly how Bill and Jack accomplished their transactions.

Prioritising into high, medium and low categories is a crude though analogous indicator of the relative valuation by Bill and Jack of the possessions available for trade. You simply stretch the meaning of prioritising to indicate, in some way, the relative utilities of the goods to Bill and Jack.

First a brief note on 'utilities'. The book for Bill, for example, in Table 8.2, has a 'utility' of '2' and for Jack a 'utility' of '4'. This does *not* mean that Jack values the book twice as much as Bill. Each individual compares the utilities of the possessions for themselves and not with each other.

Crudely, take the utility of '4' to mean that for Jack, Bill's book would have a greater amount of satisfaction (however Jack defines his satisfaction) than, say, Bill's ball (2), should he acquire these possessions. Meanwhile, for Bill take the '2' to mean that his book has much less satisfaction (however Bill defines his satisfaction) than, say, Jack's pen (10), should he acquire it.

By placing the utility rankings of 1 to 10 on the vertical axes, they align roughly with the three levels of priority: high utilities of 7–10, medium utilities of 4–6, and low utilities of 1–3, as shown in Table 8.3.

The slopes of the lines link the valuations of the possessions as they would appear if we contrasted their differing priorities for Bill and Jack. Items of low valuation to Jack, for example the pen (1), are higher on Bill's utility scale (i.e. 10). If both of them trade items of differing priorities, this confirms the particular exchange of items identified in the Nash bargain. Thus Bill, who values the pen highly (10), would be keen to exchange his book (say) for it, which is valued more highly by Jack (4) than his pen (1).

Given the utilities of their possessions, what exchange of the goods, asked Nash, would maximise their satisfaction after accounting for the loss of the utilities that they give up in the exchange? Nash postulated that the solution in this and every other case would be where the 'product of the utility gains is maximised'. The bargainers would agree to exchange the goods in whatever way that maximised their joint *gains* in utility.

Table 8.3 The Nash solution in a Negotek® PREP format

Bill's utilities			Jack's utilities	Priority
pen	10			high
	9			
	8			
	7			
knife	6			medium
	5			
box, toy	4	4	book	
	3			low
ball, whip, hat, book, bat	2	2	whip, ball, bat, knife	
	1	1	pen, box, toy	

For Bill and Jack, Nash asserted that they would trade as follows:

Bill gives Jack: book, whip, ball and bat.
Jack gives Bill: pen, toy, and knife.

This leaves Bill with his box and Jack with his hat. You should note that Bill would be unwilling to exchange his box for the hat because this would mean giving up a higher valued item for a lower valued item, i.e. Bill values his box at '4' and Jack's hat at '2'. Jack is likewise unwilling to trade his hat for Bill's box, because he would be giving up his hat, which he values at '2', for Bill's box which he values at '1'.

Exercise 8B

Can you explain how each trades the other items, using a similar argument? The summary details of the transaction is shown in Table 8.4.

Table 8.4 **Net utility positions for Bill and Jack after trading across their varying priorities**

Bill			Jack		
Goods received in trade	Utility		Goods received in trade	Utility	
	Gains	Loses		Gains	Loses
knife	6	2	book	4	2
pen	10	2	whip	2	1
toy	4	2	ball	2	1
		2	bat	2	
Total	20	−8	Total	10	−4
Net gains	12		Net gains	6	

Nash (safely) assumes that the players will trade those goods that they value less for those that they value more (an important principle of bargaining). And as Bill and Jack have perfect information about each other's preferences, and, therefore, each knows the true value the other places on each possession, neither can bluff the other into 'paying' more for what they want.

Compared to their original utility positions (12 for Bill and 6 for Jack in Table 8.2) and given the utilities of the possessions they traded, they have both increased their utilities (to 24 for Bill and 12 for Jack). The product of their net gains in utility is $12 \times 6 = 72$. Nash affirmed that no other combination of traded possessions could produce a gain in utility that was greater than 72. The product of their net gains in utility was what it was worth to bargain.

That negotiators don't reach the Nash solution in practice is not a definitive refutation of Nash.

Nash assumes behaviour from his bargainers that does not correspond to the common experience of most negotiators. And the most devastating evidence for

this came shortly after the Nash solution appeared in 1950. A small group of researchers, working out of the Rand Research Centre, in Santa Monica, California, invented a modestly simple game that produces remarkably consistent results. You have already met this game in the module on styles of behaviour. It is, of course, the 'Red and Blue dilemma' game, which, as you know, is a game without descriptive content though it has strict rules.

The players are told to 'maximise their positive scores'. They do this by playing for points, though they hear nothing about what the points are worth. The status of the points is roughly analogous to notions of utility, with the analogous objective of the game being to 'maximise their utility'.

There are two ways of playing the game, as the players discover for themselves. Nobody tells them which, or any, way to play, nor even that two ways exist. People, coming to the game for the first time, are therefore as close as you can get to their natural behaviour and are uninfluenced by anybody else's prejudices or notions of 'correct' behaviour. They are the perfect material for an experiment in pure behavioural choice!

The two ways of playing the dilemma game correspond closely to the great dichotomy of negotiation behaviour. If you interpret the game as being about maximising your personal gain at the expense of the other player, you will demonstrate **zero-sum** or **non-co-operative** behaviour. Your partner, whatever her first interpretation of the way to play the game, will be forced to retaliate using zero-sum behaviour too. The scores at the end of the game will not maximise your joint gains and, worse, could minimise the joint gains, leaving you both with negative or very low positive individual scores.

If, on the other hand, you interpret the game as being about maximising your joint scores, *and this coincides with the predilections of the other player,* you will demonstrate **non-zero sum** or **co-operative** behaviour. Your eventual positive scores, in this case only, are maximised (at 36 points each) and you are as close as you can get to a Nash solution ($36 \times 36 = 1296$). You can test this by multiplying any combination of scores that sum to 72 ($36 + 36 = 72$) and you will see that no multiplied combination exceeds 1296. For example, $30 \times 42 = 1260$, $20 \times 52 = 1040$, $10 \times 62 = 620$, and so on.

After many years' experience of observing managers playing the dilemma game, I can report that the majority of those who play the game for the first time adopt non-co-operative Red style strategies and many of the others, who try initially to play a co-operative Blue style strategy, soon switch to non-co-operative Red behaviour in retaliation. Nash behaviour is remarkable by its relative absence.

Remember from Module 7 that the rules prohibit the players from discussing the game or the appropriate behaviours they should use before they begin playing. That, incidentally, is the dilemma! In my experience, when the game is introduced without a briefing on 'win-win' negotiation, only 8 per cent of pairs of players simultaneously hit on the co-operative Blue–Blue play that leads to the Nash solution of 36 points each. Other researchers have found players achieving Nash solutions in an average of 17 per cent of pairs playing the game but I have no details of what, if any, hints they get from pre-game briefings. So between 83 and 92 per cent of players

gain less than optimal Nash scores, though some pairs recover from initial non-co-operative play and switch to co-operative play to gain scores in the mid-20s.

Under half of the players individually choose behaviour in the first round that suggests that they see dilemma (assuming they obey the 'rules' and make a conscious choice) as a co-operative game, but, after a few rounds, most of them find they cannot alter the non-Nash behaviours of their partner. Some, of course, find it impossible to trust their partner's behaviour over the ten rounds and, from retaliation, they both end up with low scores.

Maximising joint gains as a bargaining objective is a minority choice of the thousands of negotiators playing the dilemma games that I have observed. Depressingly for the Nash solution, most bargainers behave as if they reject maximising joint gain as their objective in an, often futile, attempt to maximise their individual gains. The overwhelming majority of bargainers end up with sub-optimal, non-Nash, outcomes.

Some players, by defecting on their promises (there are two short sessions after rounds 4 and 8 where they can negotiate with each other), manage to gain high positive scores (greater than 36) purely at the expense of their hapless partners who believed what they were promised. The arithmetic of these high positive scores still does not beat the Nash solution because what they gain over 36 points their partner loses, and the higher their own score the more it reduces their partner's score. The product of a negative and a positive number is always a negative number and one well short of a Nash solution. This leads us to consider what drives negotiators to non-Nash behaviour.

8.3 The Benefits of Bargaining

Negotiators have at least one common interest because the consequence of non-agreement means they must put up with the status quo instead of changing it in some way. As the benefits (however defined) of the status quo are available to both of them, without expending time and effort to negotiate a change, it follows that if they negotiate, it must be because they believe that they could be better off individually if they succeed in changing the status quo and, if they do succeed, then they are jointly better off too.

A simple diagram might add visual clarity to my verbal exposition. Using utilities to represent degrees of satisfaction experienced by the negotiators, Figure 8.1 graphically represents the benefits of bargaining. Careful attention to this diagram pays high dividends in understanding for those who make the effort.

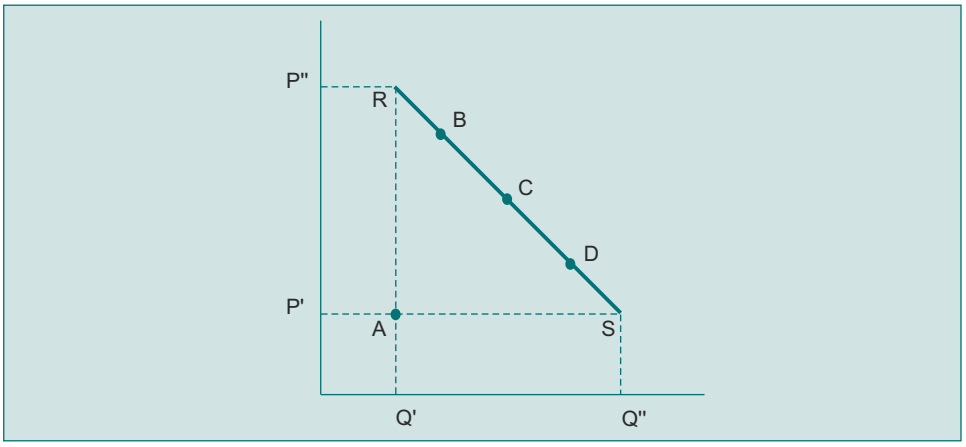


Figure 8.1 The benefits of bargaining

Before they negotiate the negotiators are at **A** in Figure 8.1. This is the status quo. If they fail to agree they remain at **A** and enjoy only the utilities available to them both at **A**. At **A**, negotiator **P** (Paula) enjoys a utility of **P'** and negotiator **Q** (Quirk) enjoys a utility of **Q'**. An increase in utility that benefits Paula but not Quirk, means Paula moves vertically from **A** to **R** and increases her utility to **P"**; likewise an increase in utility that benefits Quirk but not Paula moves Quirk horizontally from **A** to **S** and increases his utility to **Q"**.

However, a proposal from Paula to benefit herself without a corresponding benefit to Quirk (and vice versa) is likely to be rejected. As Paula cannot move herself to **R** without Quirk's consent because he has the negotiator's veto, Paula will remain with Quirk at **A**.

Alternatively, proposals that add utility to each of them benefit both of them. Visually this moves them both from **A** (the status quo) in a north-easterly direction to points such as **B**, **C**, or **D** (and anywhere in between). In each case, such moves benefit both negotiators because each has more utility than they would have by remaining at **A**.

Of course, the negotiators are not indifferent to which of the points, **B**, **C**, or **D**, they move to. Paula prefers **B** to **D**, and Quirk prefers **D** to **B**.

Exercise 8C

Can you explain why Paula prefers B to D, and Quirk prefers D to B?

You can think of the boundary line (**RS**) as being scribed between the extremes of Paula getting all the available extra utility (**P"**), including what she enjoys at **A**, or Quirk getting all the available extra utility (**Q"**), including what he enjoys at **A**. The **RS** boundary scribes through all the possible combinations of extra utility distributed between Paula and Quirk. Neither can move to a position outside the boundary because combinations of utility are not available beyond that boundary. The negotiators can only distribute utility between themselves by being on or inside the boundary.

Now to get to any point north-east of **A**, the negotiators have to at least **co-operate** enough to deter either of them using their veto. If either of them uses their veto, they will both remain at the utility distribution represented by **A** and forego the potential benefits of additional utility to each of them from jointly deciding to move north-easterly towards some point on the boundary line.

Negotiating is an act of tentative co-operation, no matter how hostile the negotiators feel towards each other as rivals or deadly enemies. This constitutes one of the common interests of negotiators.

Apart from co-operating by negotiating, parties have common interests in a negotiated outcome. If they freely negotiate an outcome, then the benefits of their agreement will address some of the interests of each party. In so far as these interests benefit each party, then they have a common interest in reaching and in implementing that agreement.

Moving from a visual exposition involving Paula and Quirk, we can look at a scenario example to emphasise this analysis of the benefits of bargaining.

Two siblings inherit their parents' farm and meet to decide how to divide it. They could agree to sell it and divide the proceeds. Now, suppose Morag is a farmer and wants to keep the family home as a working farm. Suppose Andy does not. He prefers his share of the money from selling the farm.

It could be a stalemate, unless Morag can agree with her brother, say, that she keeps the farm and pays Andy a rental (how much?) for his half share. He agrees on condition that Morag takes sole responsibility for looking after Grandma and he gets their mother's Jaguar car.

Andy needs Morag's consent to pay him a regular income, to forego the Jaguar, and to take responsibility for Grandma; Morag, perhaps, wants the farm more than she wants the Jaguar. Alternatively, selling the farm at this time could mean a low price to be shared between them, with, perhaps, most of the money they raised having to go to fund Grandma's retirement in a home, rather than her continuing to live in the house that she has lived in for years. In these circumstances Andy and Morag (and Grandma) are better off if they can cut a deal.

Like other social skills, you negotiate with varying degrees of success. Your behaviour can also degenerate when you switch from voluntary trading to coercive relationships, or seek to manipulate perceptions by various forms of posturing.

These defects are neither inevitable nor endemic in a negotiation process. Idealisation would suggest that two parties freely enter into a search for the terms upon which they can exchange what they value less for what they value more. If they find such terms, they agree; if they do not, the negotiation aborts, freeing both parties to attempt to contract with others. It also leaves them without the gains they could have made if they had found acceptable terms. They stay at **A** in Figure 8.1 and cannot get closer to **C** because each insists on distributions, such as **B** or **D**, neither of which is acceptable to the other.

8.4 The Real Bargaining Problem

The real bargaining problem lies in the dichotomy of **zero sum** and **non-zero sum**, or **non-co-operative** and **co-operative**, behaviours in negotiation. Achieving a maximisation of the net benefits in a Nash solution depends upon the behaviours of the bargainers, which in turn depends upon the coincidence, or otherwise, of their attitudes to bargaining.

Experience suggests that in most cases they behave in ways that fail to maximise their potential gains. If you choose to be a **distributive** bargainer you can only benefit at the other negotiator's expense. Only if you choose to be, *and meet with*, an **integrative** bargainer can you both make joint gains at neither party's expense. This is a choice between being non-co-operative in behaviour or being co-operative, though, strictly, this is only a quasi-choice, because the gains you seek from your individual choice of behaviour are dependent on the other negotiator's choice of how she sees the appropriate behaviour to obtain her gains.

This is the real bargaining problem – it's not just how people choose to behave that counts, it's how both independently choose to behave and then how their choices interact when they negotiate together.

Exchange can produce jointly created benefits, tangible and intangible. That both benefit from agreement does not mean that it is, necessarily, a shared benefit. What benefits one may not have any corresponding benefits for the other. Benefits express themselves differently, use different currencies and may be invisible except to the party that receives them.

Hence, there are two distinct methods of negotiation producing different solutions to the bargaining problem depending on the congruence or otherwise of the behaviours independently adopted by each of the negotiators. Not understanding this fact of life leads to many of the real problems you experience when negotiating. Idealising negotiation into a joint gaining game, and acting as if your idealisation is always true, leads only to disappointment.

Lax and Sebenius (1986, *The Negotiator as Manager: bargaining for co-operation and competitive gain,* New York: Free Press/Macmillan) make a revealing distinction between claimers and creators in negotiating. **Claimers** see negotiation as the distribution of a fixed amount between them and you. The bigger their share the smaller is yours. It is a zero-sum transaction; what they gain, you lose. Where claiming predominates, manipulative ploys, tricks and power perceptions are the tactical imperatives of your behaviour, reaching their 'highest' level of competence in 'streetwise' negotiating.

Creators are different. There are three ways to create a joint gain.

First, an agreement that you both voluntarily enter into is likely to be better than no agreement at all, on the safe assumption that, as both of you have the right to veto any deal with which you are uncomfortable, it is the value created by the deals you agree to which makes you say 'yes' rather than 'no'. In saying 'no' to any deal, you prefer to forego what you would 'gain' from saying 'yes'.

Second, by accepting another deal, replacing the one that is unacceptable to one or both of you, it must create additional value to you both in some way. If it does

not, because, for instance, it made one of you worse off than no deal, the loser would veto it.

Thirdly, negotiators, by iterating towards an agreeable deal that makes both of you better off, or no worse off, could create a previously unthought of solution, which creates additional value.

That joint gains are possible from creating value, rather than merely distributing it, is unchallengeable. The real bargaining problem is that it is not easy in practice to do so and that many negotiators (most?) behave in ways that make it unlikely that they will search jointly for opportunities for creative co-operative action. Thus, in practice, many potential gains are unrealised and inferior 'solutions' are agreed.

This constitutes the essence of the real bargaining problem: if joint gains are preferable, how do bargainers achieve them and why, we must ask, do so few negotiators seek them?

Recognising the tendency of players to behave as if a zero-sum gain is their objective alerts negotiators to the need to develop behaviours (through training, for example) that can successfully produce joint gains. The idealisation of negotiating behaviour specified by Nash to get the negotiators to solve the bargaining solution, without the traumas of enduring the process of moving from **A** to **C** (Table 8.3), disregards the range of behaviours exhibited by negotiators in the real world.

It is not all doom and gloom by a long way. The constant struggle between claiming and creating behaviours is the single most important feature of negotiation with which you will have to come to terms. There are no other routes open to practical negotiators. Acting as if Nash assumed behaviours are the behaviours of actual bargainers is naive. Negotiators have a choice in the way they behave, and understanding the severe limitation of that choice – you are totally dependent on the other negotiator's choices – is the first step to proactively changing behaviour in the negotiation process towards the Nash solution.

8.5 Rationality and Irrationality

With practical negotiation so messy and humans so unreliable, a preference for rationality in negotiation is understandable. By assuming that people are rational it is possible to develop models of negotiation that produce normative principles for rational behaviour. You can contrast these rational behaviours with the kind found in everyday negotiations and you can use insights from the rational models to signpost ways to improve behaviours.

Economics, for example, uses assumptions of rationality to produce elegant mathematical models of concession-convergence negotiation, more appropriately labelled haggling. These models are largely of limited practical value. There is also a growing academic literature in philosophy that uses rational bargaining models and prisoner's dilemma games to explore justifications for morals and ethics. Again, these models have limited practical value for practising negotiators (though the subject of the origins of morality is fascinating).

The main problem with assuming rationality is that it is at variance with how people behave. While the derivation of rational behaviour from the assumptions produces insights into what would happen if people behaved according to the assumptions, it is more than a trifle academic to rely on rationality if people do not behave that way. And practitioners are at risk of compounding their errors if they follow plausible right-sounding but deductive prescriptions derived from preferences for rationality in circumstances that are contrary to the assumptions.

That negotiation research has travelled down the rational road is evident from published work since the 1950s. I have questioned the assumptions of the Nash solution by observing how people play dilemma games and negotiate. People do not instinctively behave rationally and only a small minority opt for joint maximisation. That proportion can be increased by prompting and training but it is still difficult to achieve – even approach – the much lauded 'win-win' outcome without considerable investment in long-term relationship building. Companies that have tried to change to win-win relationships have found it difficult and many have been disappointed.

Maybe negotiators ought to behave rationally but they do not (an 'ought' is never an 'is') and while analysis of the defects of non-rational negotiating is insightful (and makes for good copy) it is not yet apparent that these insights influence practice.

Starting from observing how negotiators behave, you can improve your performance. To do this effectively you must go from description to prescription and not from assumption to prediction, though this does not disallow considerations of both approaches.

The very fact that people attend training courses to improve their negotiating behaviour is clear evidence that they do not naturally act as a rational bargainer and nor do they find such behaviour commonly exhibited by those with whom they negotiate. If it was natural to behave rationally, why would people need training?

Exercise 8D

How can negotiators achieve Nash solutions?

The case for rationality in negotiating behaviour stems largely from observation of the common errors of non-rational negotiators. On the grounds that recognition of these common errors prompts a desire for alternative behaviour, you can identify the cognitive sources of these errors and learn how to avoid them. This alone causes negotiators to behave more rationally without having to take on board the formalistic models and analyses of pure rational behaviour. Bazerman and Neale (1992, *Negotiating Rationally*, New York: Free Press) have been extremely proactive and successful in this work.

'Negotiating rationally means making the best decisions to maximise your interests' say Bazerman and Neale. They aim to help you 'decide when it's smart to reach an agreement and when it is not' and to help 'you avoid decisions that leave both you and those you negotiate with worse off'.

In their work with executives in US business they observed that they appeared to have 'decision-making biases that blind them to opportunities and prevent them from getting as much as they can out of a negotiation'. These biases included the following.

8.5.1 Irrational Escalation

Escalation is best illustrated by Neale's and Bazerman's lively and amusing auction game (1991, *Cognition and Rationality in Negotiation*, New York: Free Press). Participants are shown a $20 note and it is offered for auction in bids of $1. Whoever bids the highest amount gets the $20 for whatever price they bid. Thus, if they bid $5, and nobody bids more, they get $20 for $5 or $15 net.

The second placed bidder must pay the auctioneer whatever they bid. Hence, somebody, in the above example, coming second with a bid of $4, pays the auctioneer $4. In this case the auctioneer has paid out $20 and received $9 in return, which suggests she has lost $11.

Rationally the auctioneer is at risk but how likely is it that she will lose? According to Bazerman and Neale (and supported by my own experiences of running their version of an auction) the likelihood is much higher that the participants will escalate irrationally and produce a net profit for the auctioneer.

Somebody joining the auction is soon trapped into continuing to bid long after it is rational to do so. They continue bidding to avoid losing whatever they have bid so far, but what is true for them is true for other bidders. To win, they lose!

If asked to consider playing in this type of auction, your most rational course is not to join in the bidding at all, but if you are tempted to do so you are driven by a (greedy?) desire to bid $1 and win $20. So you enter the bidding. Sandra sees you about to make a $19 certain profit for your $1 bid and so she joins in with a bid of $2 giving her a certain profit of $18 – *but only if you stop bidding*. But if you fail to bid $3 against Sandra you lose your $1. And by bidding $3 you have a certain win of $17 *but only if Sandra stops bidding*. And so it goes on. You bid to avoid losing your previous bid, as does Sandra, and every time either of you escalates your bid to capture the certain winnings of the highest bidder, you increase the certain losses of the second highest bidder.

Obviously a bid of $19 still gives you a net win of $1 if Sandra stops bidding but, as not bidding imposes a loss of $18 on Sandra, she bids $20. The auctioneer wins a certain $1 when the bids reach $10 and $11, respectively, because the bidders pay her $21 in exchange for her paying a $20 prize to one of them. At bids of $19 and $18 she wins a net $17 profit. Once you bid over $20 she is well ahead. In practice bidders irrationally escalate well beyond $20 and Bazerman and Neale report an auctioneer's profit of $407 and claim to have made $10 000 running their auctions over four years.

Escalation behaviour is common in auctions, as well as strikes, marketing campaigns, price wars and competitive acquisitions.

You commence a course of action fully determined to succeed but you forget, or irrationally discount, the likely reaction of others who have as much influence on the

outcome as you have. You cut a price by a small amount to gain market share but your competitors follow suit, wiping out any gains you would have made if they had ignored your price cut. You know from experience that price wars are irrational but you irrationally believe that the other guys will quit price cutting first – 'we'll see who has the deepest pockets' – but if it is 'rational' for you to believe that they will quit and leave you with a price advantage, so it is for them to believe that you will quit price cutting if they retaliate.

8.5.2 Fixed Pies

The assumptions of zero-sum bargaining – that there is a fixed size of pie only – lead people to believe that they can only gain at the expense of the other party.

US Congressman, Floyd Spence, expressed the fixed pie philosophy during the SALT (Strategic Arms Limitation Talks) in the Cold War:

> I have had a philosophy for some time in regard to SALT, and it goes something like this: the Russians will not accept a SALT treaty that is not in their best interest, and it seems to me that if it is in their best interest, it can't be in our best interest.

The advice to negotiate the 'easy issues first' is a fixed pie philosophy. Asserting that it is best to negotiate the 'easy' issues before the 'difficult' ones ignores the potential for trade-offs between the preferences of the negotiators, and views negotiation as the division of a fixed pie.

8.5.3 Anchoring

Your initial entry position acts as an anchor upon which the changing pressures in the negotiation pull you towards a settlement or deadlock. The anchor influences perceptions of the other negotiator about what is possible. Chester Karrass advocates that you open 'high', which is another way of saying that you should strongly anchor your entry point.

The problem arises when you decide on where to open. Upon what information is your decision based? The irrationality of anchoring on non-relevant information leads to entry points that deter negotiation when they appear to be unrealistic for the other party. Certainly, outcomes are influenced by opening positions because your entry point can structure or influence their expectations, but they can also influence the outcome negatively – they cause the other negotiator to walk away when they believe you to be too extreme.

If you remember that an entry offer is only a first offer and that you should challenge the first offer, you have an antidote to overreacting to initial stances. If anchoring is unrealistic, so is walking away when they first reveal their aspirations to you. You can counter-anchor too. This might set a large gap between you but what works on your expectations also works on theirs. You both have, perhaps, a long way to go before it is appropriate to make a definitive judgement that the anchors are too entrenched. If too early a reaction is irrational, so is collapsing towards the other's extreme position and so is taking too personally what they are doing.

8.5.4 Referent Behaviour

The way you frame an option can determine your willingness to accept an agreement. While fairly subtle, this idea is widely applicable in negotiation. For example, bank customers are more willing to pay increases in charges and fees than they are increases in interest rates, even when the total amounts paid to a bank in a year are exactly the same. The referent frame for interest rates is easily quantified and has a public standard reference point – what are current bank interest rates today? Bank charges and fees are less visible and hardly comparable. For a start you do not know what other customers are paying but you do know the bank rate because it is published daily in the press.

Why do buyers tend to value an item at lower prices than do sellers? The seller's referent point is regarded as a loss of a possession and they tend to overvalue the item in order to compensate for the loss they feel. Buyers undervalue acquiring the item because they have no sense yet of possession of it. Experiments support the observations of buyer-seller behaviours, not the least the common experience that the seller's entry price almost invariably is higher than the buyer's offer price.

Reframing referent points is a more rational response to unintended deadlock over them and can dramatically change your choice of alternative outcomes. Consider a management-union dispute over the size of a wage rise. If you see the management's offer relative to your initial higher demand you will perceive the offer as a loss from what you would have gained if they had paid your entry demand in full. If you see the management's offer as an increase over your current lower wage you will perceive their offer as a gain.

In this context, I once read in the newspaper of a union leader denouncing as 'stingy', 'insignificant' and 'wholly unacceptable' a management's offer of a £1 a week increase and, in his other role as the leader of a tenant's rent strike, he denounced as 'draconian', 'wildly excessive' and 'outrageous' the local council's rent increase of £1 a fortnight!

Reframing is psychological. Is the glass half empty or half full? People who perceive it to be half empty are usually described as pessimists by nature and those who perceive it as half full are regarded as optimists.

8.5.5 Fallacies of Prominence

Whatever is prominent attracts most attention. This is true in the use of information. Negotiators are influenced more by the information that is easily available than they are by its relevance to the current decision.

Functional managers see their company's problems almost totally from within their own specialism. Attend any company's 'away-day' on its current problems and you will see functions lining up behind that which they know most about: the company's problems through their function's eyes.

Finance sees the main problem to be the efficient use of resources and the excess of work in progress and unsold products stored in its warehouses; accountants see it in the failings of accountability and costings; production in the lack of equipment and the scheduling of small batches rather than long runs; and sales in the lack of

stocks of innumerable quantities of everything that any customer might require at short notice.

The rational remedy for negotiators is a more thorough search for relevant data and proper analysis of what is available. It is not that a little knowledge is dangerous as much as that it may not be relevant.

8.5.6 Overconfidence

Overconfidence in the likely success of your preferred position is one of the more common errors of negotiators. When you prepare your negotiating stance you often overestimate the likelihood of you prevailing. You do not take the other party's role sufficiently into account. The implication of your overconfidence is that the other negotiator is irrational and that he will accept from you settlements that are contrary to his aspirations. This results in behaviour that is likely to be less flexible than it needs to be if agreement is the ultimate aim.

Deciding what you want is the main task of preparation but remember that finding out what they want is the main task of debate. You cannot get what you want without considering what they want and the extent to which your wants are incompatible as entry positions – either one or both of you must move to a more accommodating position.

I have observed negotiators confidently adopt positions that imply that the other negotiator will give in. The more certain they are of the viability of their own position the less viability they impute to the other party's position. Rationally this is odd.

If you are 75 per cent certain that your position will prevail, the arithmetic of probability ascribes only a 25 per cent probability to the other negotiator's chances of success (.75 + .25 = 1).

Now, why would somebody adopt a position that only has a 25 per cent probability of success? Are they not as rational as you? Apart from considering your risk-aversion sensibilities it must occur to a rational person that perhaps your 75 per cent confidence is misplaced? If they also are 75 per cent certain of success, something will have to give to get a result because the sum of the probabilities of an event occurring and it not occurring must always be unity [$p + (1 - p) = 1$].

Overconfidence produces inflexibility, lack of movement, lack of trading, impasse and deadlock.

So much for the errors of irrationality in bargaining. Being aware that they are errors helps you to avoid them to some extent. But of what does a rational set of behaviours consist?

8.6 Deductive Rationality

Phased models map what people do in social interactions. They have an inductive bias. Nobel prize-winner, Herbert Simon, deduced a behavioural model for individual rational choice. The original three steps in Simon's 1955 deductive model are shown in Table 8.5.

Simon assumed rational choice on the part of the decision-maker. He also acknowledged that there was a possibility for feedback between each step, so that his model is not a linear one-way process. If, for instance, subsequent information reveals inadequacies in the previous step, you may return to that step and redo your work there.

Table 8.5 Simon's decision model

1.	Identify the problem.
2.	Search for alternate solutions and their consequences.
3.	Preference order solutions and select a course of action.

Briefly, they argued for parallel steps as follows:

The search for solutions involves testing potential solutions against some form of criteria, which can be changed if the solutions it suggests prove to be unsatisfactory to one or other of you. By iteration, you eliminate unsatisfactory solutions and use amended criteria to judge the replacement solutions. You do this until a mutually satisfactory solution emerges.

Simon asserted that decision-makers are not perfectly rational for they are necessarily bounded by crucial deficits in the information necessary to act like perfect decision-makers. In practice, Simon's decision-makers do not have the time nor the access nor the ability to process all the information required to make the perfect decision. Therefore, they do the next best thing and make decisions that satisfy at least some limited or acceptable criteria, rather than continue in the perfectionist search for the highest value solution. Simon's ideas of **satisficing** and **bounded rationality** won him the Nobel Prize. The differences between maximising and satisficing behaviour are significant. Behaviourally they are quite different, because the maximiser's choice is determined by restrictive assumptions and the satisficing choice is determined by the negotiator's perceptions.

Rational decision models might not travel well when transferred from the logic of individual decision-making to the kind of multi-party decision-making commonly found in a negotiation process.

8.7 Fisher and Ury on Principled Negotiation

Fisher and Ury's seminal work, *Getting to Yes: negotiating agreement without giving in* (1982) Century Hutchinson, London, has significantly influenced the theory and practice of joint problem-solving. Its prescriptive model is widely accepted among many practitioners in dispute resolution and mediation, though less so by practitioners of commercial negotiation.

Principled negotiation has a prescriptive sequence firmly rooted in Herbert Simon's rational decision model, which is for a rational *individual* and not a negotiating *pair*. What works for the rational individual may be inadequate for the negotiating pair, if only because the pair are subject to conflicting prejudices and reactions to their interactions, whereas the individual can mediate between herself and her differing views on the options in private, and she can also override certain of her

private views (including rational views) by finding subjective reasons to justify whatever she decides to choose. In negotiation most of this rationalising is necessarily in the semi-public domain. Your justification for one option is subject to critical examination by the other negotiator, for instance.

The method of principled negotiation, write Fisher and Ury:

> … is to decide issues on their merits rather than through a haggling process focused on what each side says it will and won't do. It suggests that you look for mutual gains wherever possible, and that where your interests conflict, you should insist that the result be based on some fair standards independent of the will of either side. The method of principled negotiation is hard on the merits and soft on the people. It employs no tricks and no posturing. Principled negotiation shows you how to obtain what you are entitled to and still be decent. It enables you to be fair while protecting you against those who would take advantage of your fairness.(p. xii).

Exercise 8E

What negotiating style is implied in principled negotiation?

The origins of principled negotiation lie in the critical stance that Fisher took against the post-war foreign policy of the United States (his earlier books placed him on the radical wing of the US Democratic Party). For a politically alert intellectual, Fisher has often displayed a naivety about politics in a democracy like the United States, where, for instance, presidential power is constrained by opposing coalitions and institutions. The freedom of manoeuvre implied in accepting Fisher's criticism of successive US governments was unrealistic. Ironically, his criticisms were misdirected (in terms of their influencing events). Effecting a change in foreign policy on the scale required by Fisher was more likely to come from within the monolith of the ruling Communist Party of the Soviet Union, which is what eventually happened. Totalitarian governments can make the necessary major changes in policy precisely because they are not, like parties in a democracy, subject to a four-yearly popular mandate, with a rival party snapping at their heels if it perceives weaknesses in their 'defence of the country's interests'. It was not that the US government's version of the national interest was intellectually correct (though I believe it was) but that a democracy makes it difficult to breach a popular consensus quickly without the elected party paying a heavy political price, such as loss of office, to a rival through a populist reaction. Hence, US governments found it easier to maintain well-tried stances that worked electorally.

But times have moved on. The prescriptions Fisher offered for dealing with Kruschev and Brezhnev (basically he regarded the Cold War as being a wrong-headed dispute of US misperceptions and he ignored the moral questions involved in the issues) were superseded by the collapse of the Soviet Union and the end of the Cold War in 1989. Fisher's background as a US attorney, repelled by the ceaseless litigation and positional (i.e. Red style) bargaining common in the US legal system, also led him to advocate a method of conflict resolution heavily influenced

by his negative reaction to point scoring, blatant coercion and high blown rhetoric which result in inefficient settlement processes. The method of principled negotiation, however, requires a leap in disinterested rationality on the part of the players.

Principled negotiation, or negotiation on the merits, asserts the debatable premise that traditional negotiation inevitably means positional bargaining, which, in turn, because of its alleged in-built defects, inevitably opens stressful fault lines between negotiators. Principled negotiation as a method, it is claimed, is the only alternative to the errors of positional bargaining. From Fisher and Ury's examples of these errors, however, they appear to confuse positional bargaining with positional posturing (where bargaining is certainly not manifest). Nevertheless, they enjoin practitioners to abandon traditional negotiation.

One example illustrates that positional posturing is not the same as positional bargaining. Fisher and Ury write:

> Each side tries through sheer willpower to force the other to change its position. "I'm not going to give in. If you want to go to the movies with me, it's *The Maltese Falcon* or nothing."

This is not evidence of positional *bargaining* at all. It is the antithesis of bargaining and perfectly describes posturing in the form of an ultimatum. If the listener gives in to the contest of wills, the outcome has none of the characteristics of a voluntary bargain nor is it the outcome of a process of negotiation. Contests of will are what happen when the parties fail to negotiate, not what happen because they do.

Fisher and Ury set up two extremes, 'hard' and 'soft' positional bargainers, to show that neither extreme can be 'efficient', nor 'wise' nor good for relationships ('bitter feelings generated by one such encounter can last a lifetime'). They also exclude the possibility of 'a strategy somewhere in between' the extremes, and they conclude that negotiators must change the 'game' of negotiation to the principled negotiation method. (*See* Table 8.6.)

Table 8.6 Two extremes and a principled solution

Problem		**Solution**
Positional bargaining: which game should you play?		Change the game – negotiate on the merits.
Soft	**Hard**	**Principled**
Participants are friends.	Participants are adversaries.	Participants are problem-solvers.
The goal is agreement.		The goal is a wise outcome reached efficiently and amicably.
Make concessions to cultivate the relationship.	Demand concessions as a condition of the relationship.	Separate the people from the problem.
Be soft on the people and the problem.	Be hard on the people and the problem.	Be soft on the people and hard on the problem.
Trust others.	Distrust others.	Proceed independent of trust.

Change your position easily.	Dig into your position.	Focus on interests, not positions.
Make offers.	Make threats.	Explore interests.
Disclose your bottom line.	Mislead as to your bottom line.	Avoid having a bottom line.
Accept one-sided losses to reach agreement.	Demand one-sided gains as the price of agreement.	Invent options for mutual gain.
Search for the single answer: the one they will accept.	Search for the single answer: the one you will accept.	Develop multiple options to choose from; decide later.
Insist on agreement.	Insist on your position.	Insist on using objective criteria.
Try to avoid a contest of will.	Try to win a contest of will.	Try to reach a result based on standards independent of will.
Yield to pressure.	Apply pressure.	Reason and be open to reasons; yield to principle not pressure.

Extracted from Fisher and Ury (1982) *Getting to Yes: negotiating agreement without giving in*, Century Hutchinson, London.

While practitioners can learn much from the method of principled negotiation, there is no need to throw the baby out with the bath water. You can reject the errors of positional posturing without rejecting the methods of traditional negotiation. By setting up two extremes and denying a third possibility, readers are driven to a forced conclusion, just as if our options as negotiators were governed by an algorithm.

As negotiators, we could decide to change the game from traditional to principled negotiation but only if it is to our benefit to do so.

For the moment, I advise practitioners that they would be less than wise to abandon traditional negotiation just because of the avoidable (and objectionable) practices of positional posturing.

8.8 Fisher and Ury's Prescriptions

Principled negotiation is a prescriptive method of negotiation to be 'used under almost any circumstance.' The four prescriptions are set out in Table 8.7.

Table 8.7 The four prescriptions of principled negotiation

1. Separate the people from the problem.
2. Focus on interests, not positions.
3. Generate a variety of possibilities before deciding what to do.
4. Insist that the result be based on some objective standard.

Its popularity is founded on these sensible strictures – they appeal to the good sense of people who want to resolve problems rationally and in good faith.

In examining the prescriptions of principled negotiation, I make some supportive as well as critical comments.

8.8.1 Separate the People from the Problem

There can be little to quibble about with what Fisher and Ury have to say on the people problem in negotiation, nor with their remedies, all of which are consistent with our advice on how to handle difficult negotiators and how to prevent others from becoming difficult, by adopting various assertive Blue style behaviours to lead the other negotiator towards a joint problem-solving approach, based on trading without giving in. At once, the appeal of principled negotiation is fully explained. This goes to the heart of the challenge to confrontational or adversarial approaches. People are often part of the problem (sometimes they are the problem!).

Everything people say is conditioned by who they are and the state of their relationship with you. They bring a large emotional baggage with them too. When they throw this around during an interaction of any kind it is more difficult for you to find a joint solution. Emotional baggage distorts perspective. Layers of abusive hostility make for poor problem-solving and any advice to shift attention from the people to the problem is good advice, though like much good advice, it is difficult to apply if at least one of the parties is determined to keep it personal.

Emotional hurt from the collapse of relationships filters out good sense. In the heat of a conflict you lose perspective. Normally decent people lose their self-control and behave beyond accepted frontiers of personal conduct. If you follow competitive sports at all you will know how common it is for fired-up players to descend into unacceptable, even appalling, behaviour.

This is the bottom line, of course. Removing the people from the problem is a fine goal – and a necessary one to attempt, no doubt – but it is not so simple to enforce. The best you can do is make sure that on your side of the table you try to rise above personalities, whatever the other side decides to do.

If the prescription to separate the people from the problem requires that the parties co-operate in making it effective, this suggests that people problems are not standing in the way of solutions! The prescription is only required when people are in the way of creating the conditions to agree to a deal.

8.8.2 Focus on Interests, not Positions

Much of what Fisher and Ury write on Red style negotiating is absolutely on target. The adoption of inflexible positions is clearly a barrier to negotiation but in the interests, issues and positions format, positions are not a barrier in themselves, except when they are taken in isolation from the issues that make up the agenda and which serve the overall interests of the negotiators. Fisher and Ury prefer the parties to focus on interests, not positions, but interests alone are not enough.

For example, a verification issue in the Cold War arms control negotiations (cited by Fisher and Ury) consists of numerous positions: how many inspections, who by, at what notice, what limits to access, and what reporting mechanisms for alleged defaults must be in place, etc. The interest of the parties is that they are not to be

caught out by a surprise attack and hence they must ensure that the other side relinquishes the means to launch one.

One Blue test of the commitment of the parties to keep to their promises is to be precise in the details, which means establishing the range of entry and exit positions that would make the agreement acceptable to each side. This does not mean that, if the parties disagree, the negotiation collapses solely because of the difference in their positions. The Soviet Union and the USA disagreed on the number of on-site inspections to verify compliance with the arms control treaty. The Soviet Union eventually moved to a maximum of three inspections per year – originally they opened at none!, while the Americans moved to a minimum of ten inspections per year – originally they opened at 20. This left a large gap which Fisher and Ury blame on the United States government!

Exercise 8F

What is important in the differences of negotiators on an issue?

The verification agenda can accommodate a discussion as to what is meant by an inspection, but the Blue negotiator must surely test for a Red stance in the other negotiator? If the Soviet Union quibbles about the number of inspections, they either fear that they will discover from ten inspections that the USA is not cheating on its commitments (if they were not sure they would press for more than ten inspections), or that the USA will discover from more than three inspections of Soviet sites that they are cheating on theirs.

Exercise 8G

What does a failure to address a negotiator's inhibition do to the prospects of a settlement?

It is not the taking of irrational positions that have got in the way but the perceptions of the intentions revealed by a defence by each party of its position – three inspections versus ten inspections – that show that agreement on an intrinsically (and electorally!) safe verification programme was not possible for the moment. It had to await the demise of the Soviet government before progress could be made. Far from being a negotiating error by US positional bargainers, it was an inevitable consequence of the Soviet Union's stance on the verification issue and the inhibitions this excited in the democratic consensus in the USA.

Exercise 8H

Are the interests of the parties always reconcilable?

Positions are *what* we want, interests are *why* we want them. The two are inseparable. Fisher and Ury appear to emphasise that the interests of the negotiators are the only way to resolve disputes and to explore the acceptability of terms because attempting to resolve positional stances alone is likely to be unproductive. They are wrong, however, if they assume that considering the interests of the parties removes

the need to decide on positions. As we shall see, interests and positions are not mutually exclusive; they are intertwined. It cannot be the case that interests are good and that positions are bad. That would be a profoundly silly error.

Issues are the agenda of the negotiation, expressed (normally) in positions. It is not possible to negotiate without reference to issues and positions, except at the most general level of 'yes' or 'no'; but even that 'yes' or 'no' must come down to a reference to some position, otherwise to what are you saying 'yes' or 'no'?

Let us take the vexed question of a proposal to build a new runway at an airport, which is an event usually accompanied by intense controversy from those residents who are most immediately affected by the proposal.

Some residents may decide against a proposed runway by how the new flight path affects their interests in the quiet enjoyment of their property. It is their interest that drives them not to want the runway, and the more their interest in quiet enjoyment is affected – the closer, that is, their property is to the noise envelope of incoming and outgoing aircraft – the more likely that they will be against the proposal. Uncovering a party's interests helps you to understand what they are about; identifying your own interests likewise helps you to decide on your positions on the negotiable issues.

Not all people decide their positions from their interests. They could take a position for or against the runway without considering their interests first or at all. Some could deny that they had any personal interests, because they oppose the expansion of air travel facilities on grounds of political, or some other, principle.

The issues are commonly addressed by some form of stance (build/not build; yes/no, etc.) and if the stances on the issues, and the consequent alternative positions that are possible on any one issue, are in conflict, this creates the need for a process of dispute resolution.

If nobody took a stance on an issue there would be no dispute to resolve. What is non-controversial is not negotiated. Peace is the acceptance by all of the status quo. Disputes (from differences of view through to violence) arise when at least one person wants to change the status quo and at least one other person does not.

Negotiation is about the management of movement from conflicting positions towards an agreement, which often means getting beyond the positional posturing of some of the people with whom we must negotiate. To be sure, it helps in resolving disputes to focus on the interests of the parties concerned, but it is not essential that we abandon traditional negotiation or positional bargaining to achieve a workable agreement.

Following the identification of interests, Fisher and Ury recommend that you move from 'your interest to concrete options'. Now, what are 'concrete options' but just another name for positions? Traditional negotiations accommodate such a progression from interests to positions, as shown in the Negotek® PREP planner.

They also advise you to think in terms of 'illustrative specificity'. Again, what does 'illustrative specificity' mean if it is not yet another word for a position? They assert that: 'Much of what positional bargainers hope to achieve with an opening position can be accomplished equally well with an illustrative suggestion that

generously takes care of your interest'. This is excellent advice, even though it uses words like 'concrete options' and 'illustrative specificity' to avoid admitting that the principled negotiator, sooner or later, must move from considering interests to that of considering positions.

They also insist that the principled negotiator must 'be concrete but flexible' that is, in the terminology of traditional bargaining, it means to be specific in your opening position but flexible enough to move along a range of positions in search of agreement. Principled negotiation, on these admissions, is only a special case of positional bargaining, complete with negotiation ranges and entry and exit points.

I have long found it remarkable that the negotiating literature has ignored Fisher and Ury's affinities with what they criticise.

Whether you focus on interests or issues in particular negotiations is a tactical question and not a principle.

Long-running disputes between two separate communities in living in close proximity are examples of where it might be better to switch from considering the overall interests of each side to negotiating on specific and immediate issues. How do you reconcile differences that affect every aspect of the culture and lifestyles of their respective communities? We cannot hold our breath until a longer term accommodation is found when the two adjacent communities are so riven with conflicts of interest that they are in danger of slipping into violent confrontations, necessitating the intervention of the police to protect law and order. In these circumstances, negotiation on issues is about here and now. Negotiation on interests might take a while longer.

You cannot avoid the immediate issues and positions in these conflicts because the disputed issues are driven by the interests behind them. As neither side will forego its principles or amend them, your attention must switch to what can be done about the disputed issues.

You might be able to negotiate, for instance, an arrangement that determines for how many minutes a public road is free of cars on school mornings and afternoons on roads so that parents and children from the other community can walk to and from school safely and unmolested. Residents can absent themselves from the roads for a short while without it becoming an issue of civil liberty. If some people feel strongly about it they can seek redress through the courts, hopefully, in full knowledge of the consequences for the losers, civil liberties. Such disputes, obviously, can develop into severe civil unrest. What starts with verbal abuse, leads to stone throwing, road blocking and eventually to petrol bombs. Demanding that one side or the other abandons their interests and beliefs is a ruinous route to civil disorder.

You cannot negotiate principles (if we could they would not be principles!) but we can negotiate their application. To do this successfully you must be prepared to negotiate details, which implies negotiating ranges on your positions on the issues. For the immediate negotiation, appealing to interests may be less productive than concentrating on the details of a compromise.

This has long been a part of British diplomatic practice. In circumstances where it is near impossible to discuss the substantive differences between two hostile

parties because of their bitterly opposed beliefs and histories, it can help to move things forward by focusing on the 'heads of a potential agenda' for the discussions. If the 'bigger' picture is fraught with pain, let us try looking at the 'smaller' picture to ease the pain while making progress on the details.

In some bloody battles, such as during the Peninsular War (1805–1809), fighting is suspended for each side to remove its wounded, with stretcher parties from the combatant armies undertaking the same grisly tasks alongside and in the midst of each other, often nominally cut off from their respective lines.

The reverse applies if you are stuck on an issue: can you make progress by turning to the 'bigger picture' and to the interests of the parties? Traditional negotiators are not frozen into either interests or issues. A dose of pragmatism is the antidote to restrictive negotiating practice. The negotiator should adapt her negotiating method to suit the circumstances and not try to suit the circumstances to her preferred negotiating method.

8.8.3 Invent Options for Mutual Gain

Like the previous prescriptions, this one is widely accepted by practitioners, though less widely applied, largely because of the constraints imposed by higher policy-makers who often direct the negotiation activities and overtly restrict their negotiator's scope for movement. The extreme rational theorist argues in favour of surveying all of the options in any management decision process; the practitioner would likely retort that this is just not practical most of the time. But, to be fair, this is not what Fisher and Ury are prescribing. They are advising negotiators to do more than just accept what appear to be the only two competing solutions on the table, particularly as these may be narrowly framed and also, as they stand, mutually exclusive.

The principle of inventing options for mutual gain is a worthwhile activity and one that has been put to good use in quality improvement programmes, where a 'no blame' diagnosis of a quality problem, involving everybody concerned, irrespective of rank, enables a frank attack on the cause of the problem with remedies to which everybody is committed. The tentative and uncommitted proposal phase of negotiation (following signals) can encompass Fisher and Ury's advice in this respect (brainstorming, joint brainstorming, and the circle chart) to good effect, providing that the parties can shift from a Red stance towards a Blue stance.

Once the interests of the parties are illuminated, other possibilities for solving the problem are highlighted. There is usually more than one possible solution, other than the first ones generated by the parties, particularly as their first reaction to a problem is usually to enter the negotiation with their least accommodating positions (it's called giving themselves generous negotiating room!).

Recasting the problem by reference to interests enables other options for a solution at least to be considered. Behaviourally, this requires a suspension of judgement while the possible options are identified and listed.

Brainstorming sessions are recommended for you to identify the options. Initially, you can conduct this with your own colleagues but, if confidence levels are high a

joint brainstorming session with the other negotiator is suggested. The rules are the same for a single or a joint session: no idea is too silly; nor rejected because of who suggested it, and all judgement is suspended until the well of ideas dries up. This atmosphere is reckoned to create the right conditions for looking at problems from new perspectives. Deadlocks can be broken by relatively risk-free consideration of other people's ideas.

How rich the well of ideas and options that emerge from brainstorming sessions depends on the size of the problem, the extent to which 'big picture' macro level solutions dominate over 'little picture' micro level solutions. Switching from the 'yes versus no' decisions based on conflicting principles, to the conditions under which a 'yes' or 'no' decision could operate, opens up lots of flexible possibilities, some of which could induce the parties to some mutual accommodation between their mutually exclusive initial principled positions.

Consider the dispute over whether the new airport runway can be built and the impossibility of reconciling a blanket 'yes' with a blanket 'no' at the local level. Higher level policy-makers – the government, for instance – may legislate over the heads of the local community in the 'national interest', and if they get away with this politically (not assured in a democracy), that could end the dispute.

On the way to the government securing the necessary legislative authority to implement their decision, the local residents can impose a price upon the nation for their acquiescence in an outcome conceived by them as contrary to their interests. In the extreme, as at Japan's Tokyo airport battles in the 1980s, violent protests can heighten the tensions and shift from a focus on the environmental interests at stake to a test of the final authority of the State.

A brainstorming session on the micro problems raised by the local residents could produce various options palatable to them and the authorities. For instance, if the interests of the residents have been identified – remember, interests are the reasons, motives, concerns, or fears that motivate the residents in this case to say 'no' – micro policy responses can be addressed if the parties are willing to try them. This can be done by the authorities (if they have any sensitivity or political acumen) or by the residents (if positions have not hardened to the point where to contemplate searching for other options is treated as a treachery by one's neighbours). In either case, it is a way forward, which is what motivates the principled negotiator.

Those in favour of the runway should consider meeting as many as possible of the objections of those whose interests lead them to oppose the runway proposal as it presently stands. Among these objections will be the following.

The residents living within the noise footprint of the aircraft.	They can be generously compensated with double or triple glazing and other sound-proofing measures, or their properties bought at fair market value.
The impact of airborne pollution.	This can be treated by specifying and enforcing non-spillage standards for re-fuelling and tighter lean engine burn.
The effect on sleeping patterns.	This can be addressed by restricting flying hours and engine noise levels (e.g. 'whisper jets').
The effect of increased airport-related traffic.	This can be ameliorated by road re-design and landscape investments.

None of these options alone may be sufficient to break a mass consensus against an airport proposal, but together, with the micro details fully aired, they might be sufficient to reduce hostility to the proposals to manageable levels, even reducing opposition to the futile condemnations of a small isolated minority. It is seldom possible to please everybody, but then you don't need to.

Again, the method of principled negotiation finds its best expression in assisting in the sorting out of public disputes. Just how far it is applicable to the myriad of small one-on-one negotiations that dominate private decision-making is debatable.

8.8.4 Insist on Objective Criteria

In my view, the fatal flaws of principled negotiation hide in this prescription. And these flaws cause the same frustrations that lead to positional posturing.

The prescription to agree objective criteria is comfortable for those with a judicial mindset. Justice depends on objective criteria for consistently applying appropriate remedies when the facts have been established to the satisfaction of a jury. In some countries the law is codified into specific criteria about what constitutes a criminal act, and, by default, what does not. In other countries, the law depends upon the precedents set by earlier courts judging the remedies that are applicable to the same or similar facts.

When we consider the principle of an insistence on objective criteria, however, we reach a potentially serious problem. The idea and intention is excellent; its universal application is doubtful. Why? Because the parties are likely to be partisan to different criteria, the selection of which would influence the outcome for or against them. Much of Fisher's training in the principles of law is apparent here. Legal issues are decided, in theory, by the test of whether the alleged events constitute a crime against a set of legal criteria (statute or precedent). The best brains in the legal profession make the best of their client's case. A crime is defined from proving, 'beyond reasonable doubt,' etc., intent and action: the accused's guilt rides on whether his attorney can sow reasonable doubt that his client had no such defined intent or that he did not commit the alleged act, and on whether the prosecution can demonstrate the contrary. If it is difficult in practice to show this one way or another in a court of law – subject as it is to rigorous procedures and

standards of debate – how much more difficult is it for negotiators operating in places and on cases where neither of these conditions is present?

When the authors of principled negotiation include the necessity for deciding disputed issues on objective criteria, they are introducing judicial methods into negotiation. What could be surer of rational support than insisting that decisions made by negotiation should conform to a basic principle of natural justice, namely, that the criteria for a decision should be objective for those who are to submit to its governance and not be the result of pressure or the whims of powerful individuals?

But what might work for the justice system may not work for the process of negotiation as it operates around the world, including in those societies where the rule of law is more of a lottery than a reality. Agreeing on objective criteria to settle a dispute has great rational appeal but does it have practical substance in a negotiation?

Principled negotiation sets a high and admirable standard by its insistence on objective criteria, but it cannot set a norm. Criteria are often controversial, as are 'facts', and we must accept that negotiators have to handle the practical problems as they arise in unscripted, private interactions where there is no body of precedent, no bench of independent judges and precious few people willing to forego the protection of their interests to some third party's objective facilitators.

It does not require an Einstein to make the connection between agreeing to use objective criteria and the predetermination of an outcome based on that criteria. Indeed, Bob, who cannot spell his name backwards, would have no trouble realising the implication of accepting a prior commitment to using 'objective' criteria. He would either resist the notion altogether, or he would endeavour to import whatever selective criteria best suited the solution he wanted, with, no doubt, his opposite number doing exactly the same in support of his contrary case.

Fisher and Ury's prescription 'solves' the persistent problem that negotiators tend to select criteria that support their own preferred outcomes, and thereby they produce a clash of solution criteria every bit as intractable as a clash over positions, by inventing a plausible, but impractical, device of the 'convenient third party', who just happens to be available, to uncover objective criteria for resolving the disputes they cite in their text. Some examples will suffice:

- In the case of two partners designing their future home, there is a helpful architect who takes away their ideas – some of which are mutually conflicting – and re-designs the house to meet their expressed criteria.
- In a union-management dispute they cite there is a 'facilitator'.
- 'Someone' discovered at MIT a solution to a deep-sea mining problem for the Law of the Sea negotiations.
- In the long example they provide of a landlord and tenant in dispute over the rent, there is the fortuitous guidance provided by a Rent Tribunal.

A principled negotiation apparently is no longer one between the two parties alone because an additional third party appears who gets them to an agreement based on the objective criteria he or she introduces.

I find their examples unconvincing as a guide to the solution of the daily negotiations entered into by the rest of us for whom there is no convenient facilitator to hand.

Most private negotiating parties do not allow for third party interventions because neither time nor resources permit a role for them. Left to the parties, predictable differences in objective criteria take them back to positional bargaining and they will only agree to objective criteria that predetermines the outcome in their favour, unless they are tricked into agreeing otherwise.

Negotiations I have participated in provide much evidence that each side, not surprisingly, selects criteria for settlement that are heavily loaded to support their own interests. Competing objective criteria often are immovable and can lead to the fallacious rhetoric of positional posturing. Battles over criteria need not improve the rationality of negotiators at all. They are just another facet of the bargaining process problem.

Principled negotiators who insist on joint agreement on the objective criteria by which an outcome is to be determined simply ignore the fact that much of the debate phases of negotiation are precisely a contest between the competing criteria selected by each party. To expect them to search for objective criteria to resolve the dispute is unrealistic because differences in positions usually reflect differences in the criteria they adopt to justify their positions. An individual making a rational decision probably can develop objective criteria because they only have to satisfy themselves. But negotiation is about joint decisions between more than one party which raises the complexity of the task by several magnitudes. The way through the dilemma is for the negotiators to trade themselves out of the impasse.

All that the search for agreed objective criteria achieves is to shift the focus of the negotiators' debate from their positions on the issues to their positions on their criteria for settlement. In an ideal world that may be a step forward, but in reality it achieves little for practical negotiators, particularly when the solution criteria are as controversial as their positions.

A dispute over which criteria to select could be just as unrewarding as a dispute over which position to adopt. Principled negotiation once again slides into a special case of positional bargaining.

8.9 BATNA

One of principled negotiation's main contributions to negotiating practice has been the idea of a negotiator's BATNA: Best Alternative to No Agreement. Basically, BATNA asks the negotiator to consider the very best that could happen if he fails to make a deal and to compare the deal on offer with that alternative. This is a deceptively simple but very neat idea for it provides negotiators with a means of deciding the basis on which they would agree or walk away from a bargain.

Consider Elaine, who placed her house on the market for offers over £120 000. She received an offer within the first week for £115 000 but rejected it instantly as this was an 'insult' to her beautiful home (people tend to get very sensitive about their homes and cars when the market places a price on

them). The fact that it was now mid-June, and the buying season was ending until it reopened in late August, ought to have led her to consider her BATNA. If she had done so, she might have calculated that the best alternative to the sole offer of £115 000 was a diminishing chance of getting £120 000 until mid-August, minus the cost of the bridging loan from her bank of around £5000 on her new house. Her BATNA would have told her to take the £115 000 now rather than fork out £5000 certain on bridging finance and have to deduct this from whatever she could get in August. As it was, she received the same offer in August of £115 000, against which she had to net the monetary cost of £5000 for bridging, and the psychological cost of her stress and strain at her problem throughout the summer months (not to mention the stress she caused among her friends who were compelled to suffer the retelling of her woes every time they met her).

Of course, if your BATNA is better than the deal on offer you can wait for a better deal. Your BATNA is an indicator of your bargaining power. This principle has application throughout negotiation and it would save a lot of grief if the negotiators explored their BATNA as part of the preparation phase. Not knowing your BATNA could unsettle your judgement when you are in the proposal or the bargaining phases and lead you back to the debate phase, and almost certainly into emotional, even threatening, argument.

8.10 The Negotiator as Mediator

In the absence of a third party mediator, which for the overwhelming bulk of negotiations we must accept as datum, is there anything we can do if the parties are stuck on the issues (positional bargaining) or on the interests (principled negotiation) or on both (traditional negotiation)?

The absence of a third party mediator in a deadlocked negotiation requires that one of the parties considers taking over that role – at least attitudinally. This is not easy, not least because the idea incorporates a number of serious contradictions.

Exhibit 8.1 Mediation defined

'Intervention by an acceptable, impartial and neutral third party, who has no authoritative decision-making power, to assist the disputing parties in voluntarily reaching their own mutually acceptable settlement of the issues in dispute.'

Exhibit 8.1 defines mediation and it does not take much experience of negotiation to know that neither of the negotiators fits the definition. For a start, as a negotiator, you are neither 'impartial' nor 'neutral' which is why you have deadlocked! Together, you certainly have 'authoritative decision-making power' provided your power to decide is exercised jointly and not singly.

The notion that one of you would knowingly permit the other to 'intervene' in the manner prescribed for mediation is most unrealistic.

In summary, when there is no third party available, what is proposed by the notion of the negotiator as mediator, involves one of you acting as a surrogate third

party without the knowledge or awareness of the other. But can you perform the role of a mediator while remaining one of the negotiators? On the surface I would doubt whether you can.

Bill Ury makes a thought provoking point that when in a deadlock you should 'go to the balcony' (Table 8.8). This is like taking the age-old advice of 'putting yourself in their shoes' but with an added twist. From your mental balcony you are enjoined to look 'down' at both of you and not just across a table at the other negotiator from the same level.

Behind this idea is the observation that people who are in the thick of a dispute see the issues differently to those who are looking at it from the outside. When involved 'eyeball to eyeball', so to speak, you are more emotionally committed to what is going on, and what you believe is likely to happen, than when you are not so emotionally involved. The mental act of 'going to the balcony' may weaken that emotional involvement just enough for you to glimpse what is blocking progress both on your side and theirs.

Table 8.8 Ury's advice for negotiators as mediators

Don't react	Go to the balcony
Disarm them	Go to their side
Change the game	Don't reject – reframe
Make it easy to say 'yes'	Build them a golden bridge
Make it hard to say 'no'	Bring them to their senses, not their knees

Extracted from Ury, W., (1991) *Getting Past No*, Century Hutchinson, London.

Attitudinally, you should accept that other people have interests that are as important and valid for them as your interests are important and valid for you. This does not mean that you have to agree that their interests necessarily override your own – this is not about becoming a Blue submissive! But by reminding yourself of this you might want to explore ways of meeting their interests in the course of meeting your own.

The deadlock is caused by the proposed solutions of the problem not meeting enough (or any) of the interests of each party, and the act of reviewing the shortfall should itself produce some new thoughts on how to correct the current weaknesses in the existing proposals.

The fact that interests may be traded implies they can be prioritised in the same manner as issues. What are the other party's priorities among their interests? To prioritise, you must first identify their interests. Remember, their interests are uncovered by asking 'why?' they propose this or oppose that proposal or position. From the balcony you may be able to 'see' what it is they are concerned about, whereas, at the table, you may be so engaged in the inconvenience of their opposition that you cannot 'see' what lies behind their contrary stances.

A third party mediator would explore this agenda in private meetings with each party, but as one of the negotiators you do not have licence to access them in the

formal role of an agreed mediator. The more convincing you are in the role of trying to see the world through their eyes – the more you 'disarm' them – the more you will learn about the game they think you both are playing.

Understanding the other party's deeper interests and their perspectives of the world should enable you to make changes to your proposals by reframing them to accord more with their aspirations and to lower their threat perceptions of what you are about. They are more likely to say 'yes' to movement if you address their interests than if you irritate their inhibitions. The latter deserves what it usually gets – a resounding 'no'.

In the role of a negotiator as mediator you try to 'rise above the fray', to search productively for agreement without compromising your role as one of the participating negotiators. Nothing outlined above should suggest that this is going to be easy or that it will necessarily work. It is only indicative of a line of approach when faced with the alternative of persisting in deadlock.

Epilogue

Principled negotiation is an insightful process but it is not the alternative to traditional negotiation that its proponents celebrate. As a sub-set of traditional negotiation, principled negotiation makes a valuable contribution to negotiating practice and more especially to dispute resolution and problem-solving. Abandoning traditional negotiation methods, however, in favour of the exclusive use of the four prescriptions of principled negotiation could be a serious error.

Principled negotiation is largely about the conduct of mediation, conciliation, counselling or joint problem-solving, and it provides several useful insights into the avoidance of negative outcomes by applying its four main prescriptions. Closely allied with rational problem-solving methods, principled negotiation is mainly about uncovering the layers of distrust and other inhibitions on the parties in dispute by using these methods, rather than the Purple conditional exchange principle. In this one sense it is an alternative to traditional negotiation but it cannot replace it.

It is preferable to see principled negotiation as another decision-making technique, appropriate in some circumstances but not in others, neither superior nor inferior to traditional negotiation, and one of several ways of making a decision. It is not a panacea for the failings of other decision-making processes nor is it guaranteed to resolve all of the world's intractable problems. Where principled negotiation is able to make a contribution to solving certain problems, it must be welcomed but we must also recognise its limitations for resolving many negotiating problems.

Much of the influence of Fisher and Ury has been on the broader, macro, world political issues. They are very popular among liberal radicals who have prescriptive views on how the world should be reorganised. The fact that they have a highly plausible and well-presented model for how negotiations should be conducted adds much to their certainties that if only the world were different, i.e. shaped according to their own perceptions, it would be much easier to get from the lose-lose square in the Prisoner's Dilemma diagram to the win-win square.

Interestingly, both Fisher and Ury, in separate and subsequent books to *Getting to Yes*, have co-authored with other people extensions of their theme of principled

negotiation to address the problem of relationship building (Fisher and Scott Brown, (1989) *Getting Together: Building a Relationship that Gets to Yes*, Hutchinson) and dispute resolution (Ury, Jeanne Brett and Stephen Goldberg, (1988) *Getting Disputes Resolved: Designing Systems to Cut the Cost of Conflict*, Jossey-Bass). This indicates that a large investment in restructuring the context of a negotiated relationship might be required before principled negotiation can be applied generally, and somewhat restricts its applicability to the relatively unstructured context of business negotiation.

Module 9

Streetwise Manipulation

Contents

Prologue

9.1 Fait Accompli

Philip was off work on sick leave but Frances, his boss, needed the customer file for Kuan Engineering, which Philip had signed out from the records department the day before he reported that he was ill. She was rummaging through Philip's desk for the file and she turned over a book, which had a large page marker sticking out of it. As she picked up the book it opened easily at the page marker. She took in the title, *Fait accompli*, at the top of the page and found herself reading the text (Exhibit 9.1).

Exhibit 9.1 'Some ploys'

- If there is a dispute over a bill, give the seller a 'paid-in-full' cheque for an amount less than what is being asked.
- Let the seller begin preliminary work or at least conduct extensive research and evaluation on the basis of an anticipated order. Then back off.
- Have a machine installed or at least delivered. Then reject it and bargain for better terms if the other party wants to avoid taking it back.
- Tell the seller that the material delivered is already assembled or cut up. It can't be returned, and you can't pay.
- Pick up and repair the equipment you are servicing prior to an agreement on price. Keep it if the buyer does not go along with the price you give.
- Make a change in quality, price, delivery or some other key term when it is too late for the buyer to go elsewhere for his or her needs. Then negotiate.

- Stop work. Then negotiate on a new price based on unforeseen circumstances.
- Tell the buyer that you need a little more money to finish the job. Say that if there is no money there is no completion.

Frances sat down and read through the list again. She was both intrigued and troubled by its contents. If this was representative of how Philip was treating his customers, the long letter of complaint she had received from Kuan Engineering was fully explained. She continued her search for the Kuan's file.

Exercise 9A

1 How would you characterise the negotiating style set out in Philip's book?

2 Would you regard such behaviour as ethical?

Dialogue

9.2 Learning about Ploys

Most repetitive interactive activities, such as negotiation, develop a 'rules-of-thumb' approach to the induction of new entrants to the activity and to the learning process. What works and what does not work are expressed in the accumulated knowledge of experienced hardbitten, old hands in the business. New hands usually learn by 'sitting next to Nelly' and watching what Nelly does. Those that survive to become old hands in any activity do so because of their innate, or learned, skills and because they have adapted quickly to the exigencies of their craft. This is true of footballers and of business negotiators.

It is possible, and indeed it has long been the norm, for a person to become an experienced and effective negotiator in his chosen field without any formal induction into, or analysis of, the business. Even today, for example, the majority of solicitors have no formal training in negotiation, yet this probably takes up more of their time outside formal legal work than any of their other non-professional activities. Indeed, it is hard to imagine a competent solicitor who cannot negotiate.

For practitioners there is a demand for 'streetwise' advice on how to cope with their daily work. At one of my workshops, I asked if there were any areas I had not covered in the session, and a voice from the back, said: 'Give me some dirty tricks, Gavin, that's what I need right now'. My message about styles of negotiation had obviously not got through to him!

The market for streetwise advice, however, has been addressed by several presenters of highly polished and professional seminars over the years, and to some extent they convey the impression that negotiation is a form of gladiatorial contest, in which the strong thrive and the weak go to the wall (unless the weak attend one of their seminars first!). Dr Chester Karrass, from Southern California, has long stood out as one of the best of these world-class presenters, and his seminars are

marketed throughout the world (though he recently retired from running them himself).

Dr Karrass had extensive experience of industrial selling and purchasing, with a career that included senior positions with major US companies. He took his doctorate in negotiation after an industrial career (which followed his MSc degree in engineering) and he can be assumed to have been well versed in the day-to-day pressures of buying and selling at the top, and most complex, level of US business.

In a splendid example of responding to a demand for a streetwise approach to negotiation, Karrass writes in the introduction to one of his books: '[Business executives] want to know what works at the table, why it works, and what to do to defend themselves. This book was written in response to a real need, the desire of practical people to conduct their negotiations more effectively' (Karrass (1974) *Give and Take: The Complete Guide to Negotiating Strategies and Tactics*. New York: Crowell). The book itself contains 200 strategies and ploys, all of which are founded on his practical experience.

Nothing said here will detract from the positive value that a knowledge of ploys can have for a negotiator – a ploy recognised is (still!) a ploy disarmed, and, in the fortunate context that almost every ploy has a counter, it is incumbent on you as a negotiator to know how to handle yourself when face to face with another negotiator who thinks he has got your measure. However, a sound knowledge of negotiating ploys, though necessary, is not sufficient to enable you to cope with a negotiation, and particularly one that is prolonged, complex and subject to changes in your relationships.

Is my drift clear? A purely ploy approach to a negotiation – which is how the participants narrow it down – is like a player attacking up the field because he thinks he sees an opportunity, when the current state of the game says his team should avoid risks, defend its own end and play for a draw, or hold the lead they have. If the player does not understand the game as well as he understands the individual plays of football, cricket or negotiation, his manager should certainly check for understanding before he lets him loose again.

9.3 Power and Ploys

Negotiation has always had associations with devious and manipulative ploys that vary from the secretively sly through to openly barefaced rip-offs, so negotiating with 'streetwise' manipulators is risky.

Hard-pressed sales and purchasing people, who are out to do better, or do just well enough to keep their jobs, learn how to deal with tricksters. And if they can't see the particular ploy you are using at this moment, that is only because you are so devious that they haven't spotted it – yet. Before long they become convinced that every seller is a manipulative trickster.

Hence, becoming 'streetwise' is another approach to negotiation both for students and for practitioners. A genre has grown up where manipulation is discussed, dissected and, in extreme cases, recommended to negotiators without reference to

the competing approaches of negotiation as a phased process, or to the prescriptions of principled negotiation.

Students of negotiation are in a bind: we must study ploys because, like influenza and sore throats, they are a fact of life. Ploys are common enough in negotiations for you to need to be aware of their consequences for your interests if the other negotiators who use them are 'successful'.

The danger is that in your disappointment about manipulative conduct, when you feel cheated, you are tempted to replicate on others the same moves that resulted in what you suffered. Those negotiators who express a preference for manipulative negotiation claim that they manipulate others because others manipulate them. They claim they manipulate only to protect themselves ('I play Red ploys not because I want to but because I must!').

All manipulative players, however, attempt to exploit you and you should heavily discount any excuse you hear about their desire only to protect themselves. What is more, their excuses are irrelevant. What they do – how they behave – is more important than uncheckable claims about their intentions. Bad behaviour only looks good to somebody with a proclivity to avoid looking in mirrors.

All ploys aim to influence your expectations of the negotiated outcome. Your expectations of a negotiated outcome derive from your perceptions of the other party's power over you. Briefly, if you believe that your power over me is high, you are likely to be bullish about the outcome. You expect to do better than in the opposite case, where your perceptions of your power over me are low. The more powerful that you feel I am, the less well you expect to do. Figure 9.1 illustrates the relationship. Power perceptions run left to right from low to high and your expectations of the outcome run right to left from low to high. It is in practice an inverse relationship: the less power you believe that I have, the higher your expectation of the outcome in your favour.

Your perceptions of power are subject to all kinds of influences, some mere whims and fancies, a few with substance. Observation suggests that people make assessments of relative power on the flimsiest of data. The ploy merchant takes advantage of your neglect of real evidence. They manipulate the context and the environment to portray their power over you as greater than it is.

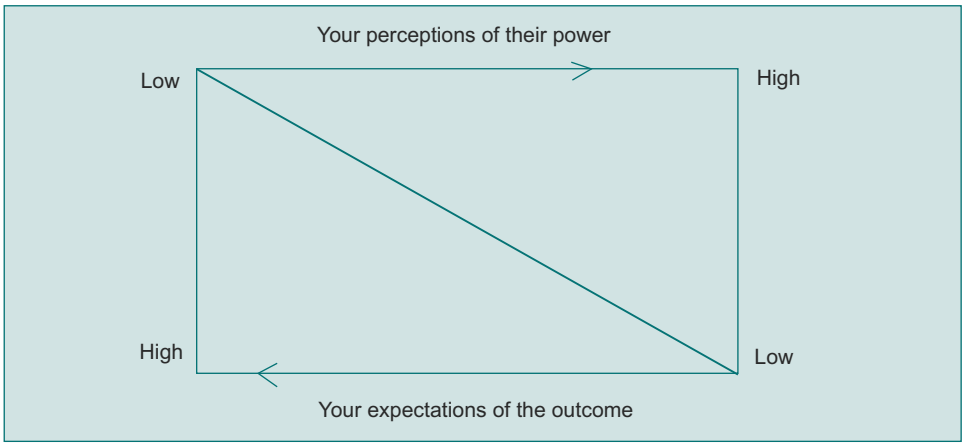


Figure 9.1 **Relationship between your perceptions of power and your expectations of the outcome**

For years, in seminars all over the world, I have asked my 'Camel Question', including in countries where camels are a common bargaining currency. Most negotiators get it wrong first time. Try it now by marking the answer you think is closest to your immediate reaction.

Exercise 9B

(Originally published in *Everything is Negotiable!*, Random House, 1982.)

An Arab with six camels approaches an oasis in search of water, where another Arab stands beside a sign: 'Water, all you can drink, price one camel'.

Who has the power:

i. the Arab with the camels?
ii. the Arab with the water?
iii. impossible to say?

You often accord greater relative power to other negotiators than the context warrants and you lower your expectations accordingly. In short, you end up negotiating with yourself. You accept less than you might because you expect less than you could realise, if only you approached the negotiation in a different frame of mind.

No wonder manipulative behaviour exploits this very human weakness! It would require a mass resistance to temptation not to exploit opportunities to influence other peoples' expectations. If an opportunity exists to gain from behaving in a certain way, somebody will behave that way.

Power is the ability to get someone to do what they otherwise would not do, and manipulative ploys and tricks are about making people do more than they otherwise would. In short, manipulation coerces you to concede more.

9.4 Three Types of Ploy

All ploys belong to one of three main types: dominance, shaping and closing.

Achieving **dominance** from an early stage enables one party to set the tone and the tempo (not to say the temper) of the following sessions. It coincides with the most conflict-ridden phase of negotiation because the struggle for dominance involves conflict-enhancing behaviours.

Characteristically, dominance behaviour is about defending extreme positions, appearing to be intransigent by design, revealing narrow grounds for manoeuvre – if any – and generally bullying 'opponents' (which accurately describes how manipulators see and portray the other negotiators) into early concessions, or into revising how far they will have to move to get a settlement.

In the middle phases of negotiation, with the concentration of the parties on debating the parameters of a possible settlement (signalling, proposing, packaging and bargaining), numerous opportunities appear that can **shape** the deal.

This is where ploys flourish and the literature abounds with ploys to shape the perceptions of what is possible and to shape expectations of what is likely. Some are outrightly dishonest and do not have any ethical justification whatsoever. They are about cheating in its crudest form and negotiators who use them are using disreputable methods – true 'dirty' tricks.

Certain ploys flourish in the end game, or the **close**, of the negotiation and are about *pressurising* the opponent to settle on the last offer. Some of them are well known and obvious but still work in the right circumstance when used against those who do not notice what is being done to them.

Ploys range in sophistication from the subtle to the obvious. Most are well known but what is more important, they all have counters, which you can use to defeat the ploy's purpose of tricking you into giving far more away than you intended.

To combat the use of ploys you need to neutralise their effects. That begins with understanding their purpose and the intentions of people who rely upon them. A ploy neutralised is a ploy defeated. To neutralise a ploy you must first identify it. Your options from then on are to expose the ploy or to counter it. Exposing a ploy risks embarrassing the perpetrator, which may concern you if you wish to maintain the relationship and because the outcome is more important to you than 'winning' an ego contest.

There is another risk, worthy of consideration. Exposing what you believe is a ploy could be disastrous if it is not a ploy. Instead, it could be that it was a genuinely unintentional and fair move as seen by the other negotiator. Accusing people of 'crimes' they have not committed, or crimes they plausibly can deny, are short routes to interpersonal disasters.

Neutralising a ploy seems by far the better response, with some slight risk that they interpret your neutralising move as your ploy. Fortunately, to neutralise a ploy normally only requires that you identify it, which you can keep, of course, to yourself.

A survey of all the known ploys would be exhausting to tabulate and probably would not be exhaustive enough to cover all their possible variations. Karrass comes close with an 'A to Z' listing (1974, *Give and Take: The Complete Guide to Negotiating*

Strategies and Tactics, New York: Thomas Y. Crowell), which is worth dipping into for elucidation of the craft of ploys from a major contributor to the teaching and practice of negotiation.

9.5 Dominance Ploys

Those of a bullish disposition feel the need for **dominance** in the opening debate phases of negotiation. They need to dominate to control the situation. This goal of control also inspires another group of people who need to dominate. Their inexperience of handling tough (for them) decisions, in which there is a real prospect of other people saying 'no' rather than 'yes', fires their need to dominate. They push for dominance to limit the prospect of any other decision than the one they want, just in case you are awkward enough to say 'no'.

Many of the plays for dominance begin before the negotiations really get under way. In an earlier book of mine, *Everything is Negotiable* (1982, 3rd edition 1997) I referred to the 'props' of negotiation. These include all those symbols, signs and stage settings that create an image of the power balance between you and the other party, aimed at softening you up to induce you to move the most.

Sales negotiators are familiar with the props deployed by buyers to intimidate you into negotiating with yourself. In business they use props on a grand scale. Dominance is intimidation and while the props are less active and obvious than the verbal versions, nevertheless they are as powerful on your perceptions and can be even more powerful for being so subtle.

The remedy? Understanding why the props are there is a good place to start. They are there to make a statement about them to you. You are visiting them and they have all this splendour around them. What do you have in contrast? If the comparison is unfavourable, and you notice this enough to covet their surroundings, it's a 'gotcha'. You have taken the first step to lowering your sights.

Better to remind yourself that splendid foyers, complete with fountains, atriums and super silent glass lifts, are the early signs of insolvency (followed closely by company jets and helicopters, yachts and a penchant for the fast life). Overcome your envy with pity and determine that such props are an incentive for you to up your prices and to insist on cash upfront.

9.5.1 Pre-conditions

When face to face, or just before it, the verbal dominance ploys begin, as if on cue. The **pre-conditions** ploy sets the scene between you. Either you meet the conditions and comply or there is no purpose in meeting. Their pre-conditions include insistence on 'vendor's contracts only', 'assignment of intellectual property rights', 'prohibitions on working for competitors', and such like. These are tricky ones.

Pre-conditions are tried in extremely difficult negotiations where the parties have a history, often a bloody one, and each side demonstrates its reluctance to negotiate their differences by attempting to impose a pre-condition.

To be sure, some pre-conditions enable the parties to accept negotiation as the solution to their problems. Distinguishing between blatant ploys and trust-building measures is a matter of circumstance and context. 'No negotiations under duress', or 'No negotiations with terrorists', can be ploys to stop negotiations beginning by creating insurmountable barriers between the parties, thus adding another problem to the one that causes them to be under duress. This pre-condition ploy demands the (unlikely) surrender of the strikers or the terrorists, which is OK only if you can break the strike or defeat the terrorists.

As confidence-building measures, some pre-conditions and the willingness of the parties to accept them create the right conditions for a negotiation to begin. Those pre-conditions that are part of a propaganda war between the parties are not about confidence building. They are simply part of the wider conflict between them. Negotiating the release of some hostages – the sick, the young, the aged, etc. – is a useful pre-condition to build confidence between the terrorists and the authorities for the more difficult negotiations that must follow. In business, similar pre-conditions can be a useful test of intentions.

9.5.2 Non-negotiable

Closely aligned to the pre-conditions ploy is the assertion that some issues are '**non-negotiable**'. This widely used ploy prohibits re-negotiation of the fixed terms and conditions insisted on by powerful vendors and buyers. Taking vendors first, included in the non-negotiable issues are their 'standard terms of sale', often printed in closely set type (I have seen them printed in grey ink making them almost invisible!). Whether you accept that they are non-negotiable depends a great deal on how you perceive the relative power balance.

Before mainframe computers became a commodity item, the big vendors, such as IBM, Digital, SUN, etc., imposed vendors' contracts on their customers. As substitution into other forms of computing power became prevalent, the major customers of these suppliers, often large public utilities and government departments, insisted on contracts that included *emptor* clauses, and, in time, they insisted on buyers' contracts only. Now the buyers play the non-negotiable ploy on the vendors.

Many will argue that non-negotiable terms and conditions are merely prudent business and are not the same as negotiating ploys. Yet every contract is the written expression of the distrust one party has of the other, and much of this distrust arises not from a specific concern with the person with whom you are about to do business but from unfortunate experiences you have had with others in the past. Given the billions of transactions across the globe, it is no wonder that solicitors add more and more clauses to what should be fairly simple contracts to cover this or that obscure possibility that might occur because of reported experiences of it elsewhere.

Demands that issues are non-negotiable are a well-known dominance ploy. They aim to weaken your negotiating stance by taking away the possibility of you weakening theirs. Sometimes they are emotional, sometimes logical. Such is the emotion that clouds judgement that they will not discuss other issues unless you agree to

certain issues being set aside. You can accept this in total or you can bend partially by suggesting that, for the moment, you will set aside the forbidden issues and see what progress you can make on the others, while reserving, or at least intimating, that the whole deal depends on all the issues being aired.

If the demand for items to be non-negotiable covers items of great importance to you, it could be a deal blocker until you overcome the obstacle. Context will determine the best way to move on.

The brute fact remains that if they have enough power to enforce on you the non-negotiability of anything they will probably get their way. It depends how much you value a negotiated outcome, what cards you have left to play, how much you fear what they threaten if they do not get their way and what time you have to reverse their demands.

9.5.3 Rigging the Agenda

Similarly, they could attempt to rig the agenda, either by rigging the content or by rigging the order of business. Generally, unilateral determination of either the agenda or the order of business is not compatible with the normal negotiating practice. Both parties have a veto on what they negotiate about – if they won't attend your meeting to discuss whatever it is you demand, you cannot negotiate for them – and they have a veto on the order in which you go through the agenda. In some circumstances a party tries to gain advantage by trying to separate issues into a particular order, which suits them because it presupposes hidden constraints on what follows. If you agree to a total budget before you cover your expenses you are under the gun to cut your necessary expenses. This squeezes your profitability.

9.6 Shaping Ploys

The early (too early?) shaping ploy warns you of their intentions. The most fatuous one of all is the '**final offer**' ploy in the opening exchange before much has been said by either party. 'That's my final offer' is so crude it is a wonder anybody takes it seriously. How can an opening position be a final offer, unless you have the absolute power to enforce it? If you have, why are you bothering to negotiate? If you haven't, why should they take you seriously, except perhaps out of embarrassment for the hole you have dug for yourself?

Publishers often try the intimidating ***fait accompli*** ploy of sending a signed contract to the author with an implication that it is best for them to sign and return it, without resorting to the 'messy' business of challenging any of its clauses, because delays and troublesome queries might induce the publisher to quit the deal and withdraw their 'generous' offer to publish your precious manuscript. Many an author has meekly signed a publisher's contract so as not to 'antagonise' him with querulous detail.

Shaping ploys shape deals in their favour. Every deal can be cut several ways and the manipulator aims to pick up concessions here and there, often without offering much, if anything, in return. Remember, identify a ploy and you neutralise it.

9.6.1 Tough Guy/Soft Guy

Probably the most famous ploy is that of '**tough guy/soft guy**'. Almost everybody sound in body and mind knows of it, so I wonder why it still works? I know of no book on negotiation 'ploys' that does not mention it.

In negotiation, you meet the players of this ploy in many guises. They can appear as two people, ostensibly different individuals but in reality working as a team. This helps you to identify the game they are playing. Or they can be a single person, using the device that while they are amenable to your position they have a distant committee, or an unsympathetic boss, and unless you help them by making concessions they will be unable to help you. If you fall for the line, you go out of your way, even beyond your budget mandate, to 'fix' the deal with them, and you wish them luck when they negotiate for you with the, probably fictional, superiors they created to play the tough/soft guy role against you.

Tough Cop/Soft Cop

An easily irascible cop interrogates the patsy; she shouts a lot, physically intimidates, perhaps slaps the guy around a little, threatens dastardly outcomes, and leaves the room after a while leaving the patsy cowering and whimpering. In comes a nicer cop. He oozes humanitarian sociability. Off go the lights in the eyes, he releases the cuffs, and produces cups of coffee and some cigarettes (it not mattering if you smoke or not – doughnuts will substitute just as well). Your gratitude to be reunited with the human race is such that you co-operate with him, as long as you avoid dealing with his partner. In a really convincing performance, he helps you fill in an official complaint form, while offering you his private view that it might just prejudice the judge against you. If you ignore his hints, he shreds it when he ends his shift.

9.6.2 The 'Bogey'

The bogey, writes Karrass, 'is simple, effective and ethical'. It consists of convincing the seller that you 'love his product' but you have a strictly limited budget and that if he wants to sell his product he must come down in price. Depending on the seller's reaction, a new, better deal is possible. The bogey does several things. It can be used to test the credibility of the seller's price.

Exercise 9C

How would you characterise this ploy? Consider the possibilities below before checking with my answers in Appendix 2.

1. A Red ploy used by a Blue stylist to test for Red play in the other negotiator?
2. A Blue ploy used by a Red stylist to test for Blue play in the other negotiator?
3. A Red ploy used by a Red stylist to test for Red play in the other negotiator?
4. A Red ploy used by a Red player against the other negotiator?

The seller might react positively – 'How can you get hostile with someone who likes you and your product?' asks Karrass – by revealing information about the details of his costings, such that you are in a better position to force his price downwards.

Exercise 9D

What style of objective is this? Write your answer down on a separate sheet of paper before checking with mine in Appendix 2.

On the other hand, it might provoke the seller to look at your 'real needs'.

Exercise 9E

What style does this require of the seller? Note your answer down on a separate sheet of paper before checking with mine in Appendix 2.

'Before long,' writes Karrass, 'it is discovered that some things in the original price can be trimmed away, others can be changed and still others can be adjusted by the buyer himself to meet the budget. Each party has helped the other reach its overall goals' (Karrass, p. 19). This, somewhat wishful, Blue outcome, however, is less likely than the more common one of simply confirming the Red buyer's suspicions that all prices are padded, and the Red seller's belief that all prices should be padded in self-protection from a buyer's bogey.

There are, of course, counters and Karrass outlines them. All involve the seller blocking the bogey with Red style counters:

- He can test the bogey and seek flexibility.
  It is a typical Red response to assume that all budgets are flexible upwards.
- He can be ready to offer an alternative (cheaper) package that meets the budget.
  This is the Red ploy of switch-selling from what the buyer wants to an El Cheapo version. (Car sellers do it all the time – they show you the rock-bottom standard model before they show you the de luxe one, as if this is all the choice that you have. The contrast in quality is supposed to frighten you into paying the higher price for the de luxe model.) I named this Red ploy in *Managing Negotiations* (1980, Business Books Ltd) as the Russian Front – present someone with two awful choices, but one which is absolutely more awful than the other, and they plump for the less awful, echoing the Second World War preference for German soldiers to go anywhere else but the Russian Front.

- He can escalate the decision to another level – find out who controls the finance for the deal.
  This is a highly provocative Red ploy as it risks offending the other negotiator who is usually in his position because he carries out his financial boss's instructions to squeeze the seller's prices.
- He can also come prepared with Red blockers, such as minimum order value, minimum quantities, compulsory joint purchases, fixed warranties, high volume discounts, exclusive supply clauses, special prices for special specifications, charges for redesign and advance payments, etc.

All of these are Red ploys and are frequently included in the seller's conditions of business by his company to prevent him giving away the store to Red style buyers. They are also vulnerable to Red style demands for special cases and exceptions 'if you want any of our business'.

9.6.3 The 'Krunch'

A buyer tells a seller: 'You have got to do better than that'. This is the Karrass Krunch. It works because, according to Karrass, there is always some slack in a seller's prices. He also notes that he believes that the ploy is ethical but 'there are many who do not' share his belief (p. 91).

Exercise 9F

Consider carefully what style of ploy the krunch is and what its long-term effect will be. Write your answer on a separate sheet of paper before checking with mine in Appendix 2.

If buyers are known to resort to the krunch, they invite sellers to anticipate it by the Red ploy of padding their prices. This is self-defeating in all but the short run.

The Karrass solution to the krunch from the seller's viewpoint is for him to 'discover what the problem is' (a Blue approach) and to use a version of the seller's well-worn 'apples and pears' defence (i.e. no two offers are strictly comparable). In short, the sellers should resort to persuasion and standard sales techniques for overcoming the buyer's objections.

9.6.4 The 'Nibble'

'Nibbling pays. Somebody once said, "If you can't get a dinner, get a sandwich." The nibbler goes for the sandwich. It may not do much for his ego but it helps his pocketbook.' (Karrass, C. (1974) *Give and Take*, Crowell, New York).

Exercise 9G

What style of ploy is the nibble? Note down your response before checking with my answer in Appendix 2.

In some contexts the nibble works, and in others it is a constant source of strife. It is tried in too many instances for good business relations, and is the single greatest

cause of loss of your competitive advantage in favour of those firms that avoid the nibble and deliver what they promised. 'Buyers nibble on sellers and sellers nibble on buyers,' says Karrass, and he gives examples of sellers nibbling by making overshipments, by supplying slightly inferior merchandise, by not performing promised services, by delivering late, by adding special charges…, and 'Buyers nibble by paying bills late, by taking discounts not earned, by requesting special delivery or warehouse services, by asking for slightly better quality than contracted for, by demanding extra reports, certifications or invoices, by getting free engineering charges, and by requesting extra consulting and training help for nothing'. All of this is Red play and it is ultimately self-destructive.

The audience of business executives at a seminar propounding this streetwise description of the real world are easily wound up into indignation – has not some of the above happened to you in your dealings with a buyer or a seller? It certainly has to me and it gets me angry to think about it. Having been worked up, I am now in a mood to get back at them and there are loads of things I can do to get revenge – the presenters have shoals of ploys available in books and tapes that will help me fight back and with justice too! But hold on. Is this not where we came in? In what possible sense can there be a winner and a loser in a lasting relationship? The central question posed by a knowledge of the nibble is surely: how do we stop the cycle of Red–Red behaviour in two parties trying to do business together? The answer lies in looking at the negotiation game as a whole and not in staring myopically at individual components of it.

A purchasing department, for example, divides its time two-thirds/one-third between negotiating prices and clerically correcting botched-up invoices and despatch notes that are irreconcilable with reports from Goods Inwards (I speak from experience of several major company purchasing departments in this sort of bind).

Heads of departments, who attend a ploy seminar, will find plenty of ammunition to go to war on delinquent suppliers. However, their better course of action is to review the purchasing policy that lets loose its buyers on hapless sellers from these few delinquent companies, and that endorses the view that its staff are doing their job well when they drive down prices by reflex action and impose onerous conditions for the sake of them, which get more onerous as they try to fight back against more subtle, and persistent, supplier failings. It is a vicious circle, and one you should be familiar with in your knowledge of the argument trap of the debate phase.

9.6.5 Miscellaneous Ploys

The **salami** ploy is similar but different to the Karrass nibble. Salami comes in slices. Unable to get agreement to a major change – such as a company pension scheme – the negotiator attempts to salami by trying for agreement, a thin slice at a time. He suggests that only the longest serving employees qualify for company paid pension contributions, not everybody. Facing a couple of dozen people qualifying against a couple of thousand, the employer's representative feels able to justify committing to the smaller expense.

Of course, next time the contract is re-negotiated, and every year thereafter, the union negotiator seeks new salami deals to widen eligibility among the employees until, in due course, the entire workforce is covered by a company pension scheme. The employer, meanwhile, saves pension contributions for the diminishing band of those not yet eligible. In like spirit, the employer could pave the way for agreement on a company pension scheme by rejecting the union's claim for everybody by disqualifying all but a few employees in a reverse salami, hoping to postpone the cost increases by dragging out the timing of changes in the eligibility criteria.

The **sell cheap, get famous** ploy is legendary in the world of entertainment and in any circumstance where you are pitching for business for the first time. It is also controversial, or at least the appropriate response I recommend is controversial among some people at our seminars. So many people think unlike negotiators that I am not surprised that they get worse deals than they need to. The power of the ploy is founded on the sheer determination, nay desperation, of its target victim to get a foot in the door, that they will consider almost any pricing proposition put to them by a buyer with a plausible line in having some 'golden key' to their future.

The producer, for example, tells the young actor that as she is unknown, she cannot get the top rates she wants – probably deserves – but if she does this film on the 'cheap', she will get so famous that 'train loads of money' will be hers from then on. Its use is not confined to film producers. I have lost count of the corporations who have told me that just having them as clients will do 'untold good to my reputation'.

We are all familiar, I hope, with how advertisements refer not to 'low wages' but always to 'good prospects', and how buyers speak not of 'one-off low priced orders' but vaguely of 'the possibilities of high volume purchases'. The 'Chinese widget deal' is an extreme example of the 'sell cheap, get famous' ploy. In this version the Chinese buyer places his demand for a low price in the context that there are a billion people in China. True, but the two facts of a low price and a large population are not necessarily connected. My advice is that if you sell yourself and your products cheap, you will get exactly what you demonstrate you think they are worth.

Sellers use the **add-on** ploy in the often successful attempt to raise the final price paid by the buyer for the product. You negotiate what you think is the actual price for the product or service. Once this is agreed, the seller interprets your agreement as a signal to charge for extras. What you bought was the standard product or service and not the full one.

It is essential, therefore, to know what it is you are buying by asking insistently: 'What do I get for my money?'; 'What does your offer include and exclude?'; 'Let me be clear, if I buy the all-inclusive package at the price you have quoted, give me examples of what is meant by "installation", "training", "access to helplines" and "upgrading"?'. Until you are satisfied that everything you want covered is included in the price, do not agree to anything. If you do agree too early to an unspecified package, you might regret it when the full bill comes in for payment.

Limited authority gives the ploy-maker a power he is not entitled to, though he is entitled to claim it if you are willing to acquiesce in his deception. If he tells you his authority to vary a deal is strictly limited, and you are already at that limit, you

have a problem if you want the deal (he has a problem if you don't). He is not refusing to move, it is somebody else (echoes of 'tough guy/soft guy'?) who is the cause of the problem. How can you argue against that?

If company policy declares minimum order quantities, maximum volume discounts, large pre-order deposits, strict 'taken into use' provisions, and delivery charges, it is difficult to expect the seller to overturn company policy on your behalf. If he does not have discretion he cannot use it. You either accept the deal, within the parameters of his limited authority, or you start again with somebody else.

Akin to limited authority is **higher**, or **escalating**, **authority**, in which the deal has to be referred to the next most senior person in the organisation, and the next, and perhaps the next above him. Union representatives explicitly require endorsement of what they agree with you from their members, and, to be frank, deals may not be worth much if the representatives are not allowed this facility. Of course, you are dependent on how they report on the deal – with enthusiasm or by them just going through the motions – and it can provide an excuse to come back for more because the members 'won't agree to what is on offer'.

Many deals are also agreed 'subject to Board approval', giving the negotiator a passable excuse for coming back with a couple of yes, buts, and at least one quivering quill. Karrass advises 'firm counter-measures' against the escalating authority ploy but warns that it 'takes an exceptional man to stand up to the tactic'. One useful tip he gives is: 'Do not repeat your arguments at each level. Sit back and let your opponent do it.' It is easier to critique, Karrass correctly observes, somebody's (mis)interpretation of your position than defend somebody else's dissection of your recently spoken words.

9.7 Closing Ploys

Closing ploys tend to be pressure ploys. Momentum builds up towards agreement and the final shape of the deal looms. Careful pressure here by a manipulative negotiator pays him dividends at your expense.

9.7.1 Quivering Quill

It is often observed that the most dangerous time in a negotiation is when the euphoria of agreement is building up, the more so when the negotiations have been difficult and time consuming and you are ready to go home. Extra concessions can be extracted by the **quivering quill** (named thus by me because 'quivering fountain pen' does not quite sound right!). It relies on your enthusiasm for a settlement overcoming your judgement. The deal is close, they have their writing instrument in their hand, hovering above the page, and then they spring it. 'I'm still not happy with clause XI', he says, laying down his pen, 'for reasons I have already stated. It leaves me vulnerable to price swings. If you could agree to cover them, then I could sign now and we could get on with the deal.' If you are desperate to sign and the concession is palatable (too high a demand and they would interrupt your drift into euphoria) the chances are you will move enough to get their pen over the page

again. And if you do, it is not unthinkable that they might try another quivering quill ploy to keep you moving.

9.7.2 Yes, but

A more blatant quivering quill is the **yes, but** version of the ploy. Here she tells you directly, euphoria looming or not, that there is this or that minor difficulty in the way of a deal. It can be infuriating to deal with a 'yes, but' player. No sooner do you resolve one 'yes, but' and another one pops up. But you only have yourself to blame.

If you only moved conditionally and kept the deal as a package – 'nothing is agreed until everything is agreed' – you could insist that all of the remaining 'little difficulties' were identified before you responded to any one of them. You could also insist that these new items could be discussed only if they were taken care of within the present package limits, otherwise you would have to re-open the package to make adjustments across the other items which you had put forward as a basis for your solution. This places the 'yes-but-er' in the uncomfortable, for her, position of having to move to get concessions from you, instead of getting them for nothing. Therefore, check for all the 'yes, buts' she has and never take them one at a time, because she will likely think up as many as she can get away with as long as you appear willing to accommodate her.

9.7.3 Now or Never

The **now or never** closing ploy is usually foreshadowed by hints of a pending deadline. The hints become more explicit as you near deadlock over some of the issues. If the deadlock is right across every issue, now or never becomes an ultimatum and it is less effective. It is the gentle hint of a 'natural' termination of the negotiations that works most effectively, particularly if the deadline has some apparent, though spurious, credibility.

The pressure intentions of now or never are obvious. It works when you accept that you are under time pressure to take what is on offer and, though you are dissatisfied with aspects of the offer as it stands, you are more concerned that prolonging your search for better terms might jeopardise the deal if it runs into a credible deadline imposed by the other party. Deadlines are always questionable. Some are serious, many are dubious, which is hard to determine in advance. If the deadline bluff is called and it is a bluff, all well and good. If it isn't a bluff, you end up without a deal.

You test a deadline by running right up to it to see what happens when it looks like it will not be met. You can also turn the deadline against the person who has introduced it by asserting that 'this is the best I can do… in view of the deadline'. Deadlines are like threats and in my experience are best ignored. Responding to them, or looking as if you accept them, only legitimises them.

9.7.4 Take It or Leave It

In similar vein, **take it or leave it** is an ultimatum pressure close. It is the antithesis of negotiation, hence the earlier it is tried in the negotiation the less credible it must be, but the later it is tried the more credible it becomes in the sense that they probably mean it. Your choice is to do exactly what they demand: take it, if you believe this is the best you can do, or leave it, if you can do without whatever they are offering. It is not just your problem, of course. They too have to cope with the consequences of you leaving it.

Presumably they prefer you to take it, though the ultimatum suggests they are indifferent, and that is the significant deciding factor for your reaction if you are at the receiving end of one. Only context can inform you of the likelihood of it being a bluff, though you always have the choice of rejecting a deal which is less than satisfactory to you. This is a major part of the case for developing what Fisher and Ury call your BATNA (best alternative to no agreement). If your BATNA is better than taking the deal, you can opt to leave it.

9.7.5 Split the Difference

A seductive closing ploy, masquerading as a fair and sensible compromise, is the old stager, **split the difference**. It seems so reasonable and equitable. A difference is proving difficult to bridge, so she suggests that you split the difference with her. This is tempting, sometimes too tempting, and so you agree. In doing so, you have moved 50 per cent across the remaining gap between you and her. Fine, if you can afford to do so. But you have also missed the point that by making this suggestion she has revealed her own willingness to move at least 50 per cent of the way towards you. This leaves her vulnerable to you insisting that while she obviously can afford to move, you cannot. You can now acknowledge that the gap has been halved by her unilateral offer. Splitting the difference, while attractive, is deficient as a bargaining move because it is unilateral, unconditional and vulnerable to rejection. What next? Split the split difference?

Most closing ploys are obvious though they consistently work if you bring to the table a state of mind susceptible to them. In long-distance negotiations being away from home for long periods or the influence of pressing social engagements on timetables for your departure, can work against your resolve. With modern air travel you now have an alternative to waiting for days or weeks for further meetings, though you must be careful that you do not leave merely because your patience is driven by the pace at which business negotiations are conducted in your own culture. Expecting strict timetables to be adhered to in cultures less driven by clocks is going to end in tears unless you adjust your pace to theirs. While waiting for answer why not go home and return when they are ready? You'll probably save more than the airfare by doing so.

Epilogue

The side effects of a purely ploy approach include an over excitement of the Red style latent in all negotiators and a narrowness of vision limited to the blow-by-blow interaction taking place momentarily at the negotiating table. The negotiator who is

fixated by his relative prowess at ploys and counters and who is detached from the overview necessary to see through a complex deal, involving many people at different levels and with different interests, is severely handicapped. It is not Red ploys that determine their interests but their interests that should determine their behaviours, and their interests are seldom served by a Red–Red confrontation. Only by addressing each party's interests, through debate and proposals on issues and positions, is it possible to secure a lasting and implementable deal.

This last observation is illustrated by the nibble, for what else is the nibble, as expressed by Karrass, but a clear example of a Red style deal that is non-implementable? The purchasing departments alluded to above were in fact spending a full third of their expensive time patching up those deals that failed to be implemented and were thus cutting down on the time they had available to prepare fully for their upcoming purchasing negotiations, which forced them to rely on good old Red style ploys, such as playing one supplier off against another (the krunch!), to bash their sellers, when what they really needed was time to reflect on what sort of long-term relationship they required with their (fewer) suppliers and which was the best Blue way to achieve it.

An overly ploy approach causes interests to fade from consideration, despite some admonitions to the contrary that the presenter of a ploy seminar might slip in for completeness, and once interests fade from view, Red battles can only be engaged on issues and positions, with each side taking his revenge for losing on a detail by failing to deliver what was promised, or more correctly, enforced, under the duress of the other's Red ploys.

The man who asked me for some 'dirty tricks' needed them like a hole in his head. If he perceived of negotiation in those terms he was onto a losing play to start with. Clearly somebody in a recent negotiation had upset him greatly – perhaps he was the victim of the bogey, the nibble or the krunch, or some other of the 200 ploys that Karrass has identified. Perhaps, too, it would make him feel better if he was able to shoot from the hip at Red style negotiators who give him a hard time. But like the 'fastest gun in the west', there are always faster ones somewhere who are ready for a showdown. The life of gunslingers was short and only glamorous to those who fantasise about the Wild West in the movies. Those hankering after a Red lifestyle as a negotiator should contemplate the thought that no matter how smart or Red they are, there will always be someone smarter, and Redder, about to join them at the table.

As with all ploys in negotiation, what you think is a ploy isn't a ploy on occasion. Admittedly this is a rare scenario but it is just possible that she does have a tough guy in the wings and he is giving her a hard time over the deal with you. There is no sure way of finding out whether it is a very good play of the ploy or whether it is just the plain truth. The least you should do is block it with your own tough guy pitch but be careful of overdoing the humorous counter if you suspect she is being truthful. Nothing in this situation, however, implies that you must make a unilateral move to soften her tough colleague with concessions. If you only offer to move conditionally – as you always must – you protect yourself from falling for the

phoney tough guy/soft guy ploy and from the, albeit rare, genuine plays of its truthful cousin.

An engineering company was having problems recruiting and holding programmers for its CAD/CAM operations. The basic problem was that its pay rates for computer staff were substantially below what programmers could achieve in the local market for their services. In preparing for the forthcoming annual wage negotiations, it was decided by senior management that a substantial increase in programmers' pay was needed and that this would be covered during the negotiations.

At the negotiations, conducted by junior personnel managers, the usual contest of wills was evident. The union pushed on the management's offer and the management pushed for some changes in working practices. The personnel managers, caught up in the cut and thrust of the debate phase, thought they saw an opportunity to implement more of the changes than had been expected by their seniors, and they worked very hard at squeezing the union's resistance in exchange for a below target wage increase. On concluding an agreement, they reported back to senior management, expecting acknowledgment of their triumph. But as their ploy success on wages still left the programmers' pay out of line with the local market, they had not resolved the strategic issue of retention and recruitment of these skilled employees. This left, in consequence, the CAD/CAM department understaffed.

In short, a brilliant ploy can result in a strategic defeat.

Module 10

Personality and Power in Negotiation?

Contents

Prologue

10.1 A Divorce Negotiation

Klaus was explaining to his friend, Ng, his assessment of the personalities of the parties in a divorce settlement he was working on and how he thought that the personalities of the husband and wife could be important to understanding what was going on.

'Jose, the husband,' he told Ng, 'is highly *competitive*, and his attitude on every issue is that he must win as much as possible in the divorce settlement. If only Elizabeth, his wife, was as highly *accommodating* as he is competitive, she might not waste so much time defending her own interests.' 'Wait a minute,' said Ng, 'Are you saying that Jose and Elizabeth are both competitive?'

'Yes,' replied Klaus. 'Which is, perhaps, the problem in their marriage in that they find it impossible to live with each other as they have the same personality traits'.

'I'm not too sure of that,' said Ng, 'because if Elizabeth was a compromiser by nature, she would eventually get tired of submitting to Jose on everything, and this would give her grounds for divorce too.'

'And', continued Ng, 'if both of them were *compromisers*, they would seek outcomes that split the difference between them. The result might be a solution that is not optimal for either of them. Suppose, for example, that they had a breeding pair of championship Siamese cats, and, since the value of the cats is based solely on the fact that they are a breeding pair, two single cats would lose their value in the settlement if Jose and Elizabeth compromised by splitting the difference.'

'Yes, sure,' interjected Klaus, 'but if, instead of being compromisers, Jose and Elizabeth were *collaborators*, they would be bound to search for solutions to the problem that would benefit them both. Perhaps Jose would keep the breeding pair and Elizabeth would receive all of the kittens in the next litter?'

'But, surely, that solution could suggest itself without the intervention of their personalities?' asked Ng.

'Maybe,' responded Klaus, 'but it is more likely to occur if they enjoy a collaborative relationship.'

'I agree, perhaps, but I am not so sure that such a compatibility of their personalities is necessary to produce optimal solutions', responded Ng. 'Even worse,' he added, 'suppose they were conflict *avoiders*, perhaps the marriage would still be dragging on after it should have ended and you would not be able to earn a magnificent fee from settling their divorce!'

Ng went away with two questions buzzing in his head: 1) If similar or different personality traits of people living together can produce incompatibilities, how does a knowledge of their personalities help us to acquire insight? and 2) If almost anything is possible when personalities interact, what is unique about the influence of personality on the outcome?

10.2 How Important is Personality in Negotiating?

What is the role of personality in negotiation? Clearly, if personality influences negotiation behaviour then practitioners seeking to improve their performance will want to know about it.

My views on personality, however, are largely negative because I have serious doubts about the role of personality in negotiation practice. And, even if personality did influence behaviour, you have no hope of analysing, identifying and responding to another person's personality in time for it to make any difference to the outcome.

Personality is a plausible topic in training courses and in many academic courses, personality typing is almost mandatory. After all, psychologists have conducted sound scientific research into personality in many contexts, and any links between personality and behaviour interest trainers and practitioners.

Psychologists, particularly those interested in the effects of personality on behaviour, moved into negotiation research in a big way in the 70s. Important insights into people's behaviour have been contributed by psychological experimentation, and in the realm of negotiation studies the contribution from experimental psychologists probably exceeds all the other academic disciplines added together. Much of the rigorous, almost pedantic, experimentation that is essential to scientific progress has been conducted by psychologists studying the behaviour of pairs of negotiators (usually postgraduate students rather than experienced negotiators playing for real) under strictly controlled classroom experimental conditions. This has produced a wealth of material, some of it, unfortunately, contradictory, or, at least, to be used as a prescriptive guide in real negotiations only with caution.

What, however, is interesting from a theoretical point of view is impractical when you try to apply personality profiling under time pressure and with inadequate information. Thus, worthy insights from personality theories remain insights and not guides to practical negotiating behaviour. In practice, I believe, personality is a dead-end for working negotiators.

It is possible to adapt sound theories for practical purposes when time is scarce but it is less practical to adopt complex interpersonal analyses when eyeball to eyeball across a negotiating table during fast moving interactions. By the time you identify the other negotiator's personality and consider what you need to do, it is too late to apply what you think you now know.

This drawback has not prevented the application of psychological profiling to negotiators. Apart from several books in this area, at least one computer program allows you to input your PC with your assessments of the other negotiator's personality. Within seconds, your PC prints out the most opportune responses you should use to negotiate with that person, having previously inputted details of your own personality.

Exercise 10A

What common errors could occur in this personality typing via a computer?

My preference, instead, is for a model of negotiating behaviour (Purple conditionality) that can be applied under any and all time pressures, irrespective of the personalities of the people with whom you negotiate.

10.3 The Personality Styles of Negotiators

It is almost trite to acknowledge that personality is an inescapable aspect of human behaviour. We all have at least one personality! That said, is there much else to say? Psychologists answer 'yes' and many trainers wholly agree. Some psychologists also complain that not enough attention is 'given to how personality affects negotiation'.

Personality, allegedly, affects everything people do. Patterns of behaviour re-occur in many different situations. You display certain traits which, when identified, mark your personality. Your traits are your 'predispositions to respond in characteristic ways' and different 'situations simply trigger what comes "naturally" to each individual'. If their personality is stable enough, then you could produce responses to different negotiating situations and this may be sufficient for you to secure a better negotiated outcome. If you become aware of your personality traits, and can learn how to control or manage them, perhaps you could improve your performance as a negotiator, parent, colleague, or team player? Moreover, if you could develop the skills of identifying other peoples' personalities, especially those you deal with on a regular basis, this too might improve your negotiating performance. With practice, you could improve your ability to 'read' someone's personality from limited acquaintance, and do well even in negotiations with relative strangers.

Convinced? Well, you need to make up your mind about the role of personality in negotiation so we shall discuss the subject in more detail.

All of the popular versions of the role of personal traits or styles in negotiation originate from the work of Rubin and Brown (1975, *The Social Psychology of Bargaining and Negotiation*, London: Academic Press) who postulated that two variables determine the influence of personality of negotiation. The two variables sound more fearsome than they are in fact.

First, there is **interpersonal orientation**, or your degree of social ability and social awareness. If you are high on this variable then you are responsive to the interpersonal aspects of your relationship with the other negotiator; if you are low on interpersonal orientation then you are non-responsive. The highly interpersonally oriented negotiator reacts to changes in the other person's behaviour; her counterpart at the low end of the continuum does not.

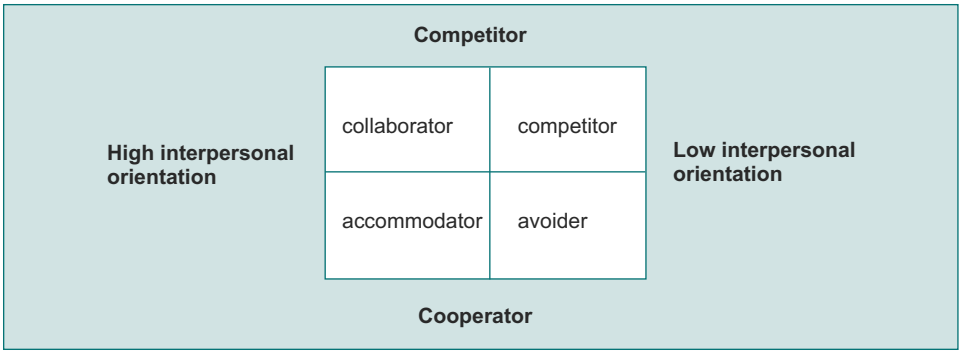


Figure 10.1 **Rubin and Brown's personality styles**

The second variable is our **motivational orientation** – are you one of nature's competitors or co-operators? Laying these variables across each other we get the four box matrix as in Figure 10.1.

The four styles are: competitor, avoider, accommodator and collaborator. Their characteristics are as follows:

Competitor

Achieving results through power, rather than relationships, matter to this type of person. They are aggressive, domineering and seek to win at all costs. Openly manipulative, they use ploys and tricks, including threats, and they talk much more than they listen. They make demands – they are takers – and seldom make offers.

Avoider

They prefer to avoid conflict, as implied in negotiating, and are happy to hide behind procedures, rule books and precedents. They avoid decisions, except those that maintain the status quo, and are suspicious of change, and are generally pessimistic (the bottle is half empty). They have few social skills and are not good at using them.

Accommodator

They are relationship-oriented, and hence try to placate persons by making early (and unnecessary) concessions if conflict threatens. They involve people in the negotiation process, they seek friendly agreement and they work at ingratiating themselves with friendly responders, often by smoothing over difficulties with verbiage.

Collaborator

They are results-oriented through pragmatic problem-solving and establishing good relationships. They are good team players and seek not to dominate the other negotiators but to involve everybody in solving the problem. For them, prolonged discourse to make the right decision is not a problem. They are good 'fixers' and even manipulative at a high enough level of intrigue, though a trifle machiavellian. They are networkers who play the informal influence game.

Which personality style makes for the best negotiators is a rather pointless question because all personality types have to negotiate at some time or other. Some, surely, will shine in some negotiation circumstances and fail miserably in others?

It is not possible, in my view, to predict the comparative success rates of the four personality types because personality is neither the sole nor the dominant determinant of the negotiated outcome. However, certain behaviours as distinct from specific personalities work less well in certain circumstances than others. I offer the alternative hypothesis that it is possible that all personality types can change their behaviour for a negotiation without necessarily having to change their personalities. Indeed, if this was not true, what would be the point of training people in appropriate negotiation behaviour? If behaviour can override personality why bother with personality?

If almost anything is possible when personalities interact, what is unique about the influence of personality on the outcome? This is reason enough, in my view, to be sceptical of the validity of the personality approach, but because it features so strongly in some training programmes it requires further elucidation.

Personality typing in negotiation rests on two weak assumptions that we:

1. are able to identify accurately our own and our counterpart's personality traits and,
2. can remember how to deal with any of the 16 combinations of the four personality styles that are possible (which become much more complex when we negotiate in teams).

Exercise 10B

Given that Module 7 refers to four behaviour types: Extreme Red, Moderate Red, Moderate Blue and Extreme Blue, is it consistent to question the value of personality typing on the grounds that this creates 16 combinations of personality combinations between two negotiators?

If you consider that scientific personality testing normally requires nine psychological tests to assess the personalities of their co-operative subjects, the likelihood of anything remotely conducive to practical use in a live negotiation (unless the stakes were very high and the preparatory budgets were extraordinarily generous) must be severely limited.

Other researchers have made the interesting point that personality affects initial behaviour but has a lesser or no impact on later behaviour. As negotiation is a process taking place through time, the demarcation between initial and later behaviour has great relevance. This suggests that your personality can influence initial behaviour, because in the earlier phase of the negotiation you have little else to rely on, other than your predispositions and experiences in defining the people and the negotiating situation.

When you have little or no information you rely on your own personality to guide your behaviour – personality, remember, encompasses your 'predispositions to respond in characteristic ways' and certain situations 'simply trigger what comes "naturally" to each individual'. However, once the negotiating interaction gets under way, the behaviour of the other negotiator becomes a more important influence on your own behaviour. Each of you reacts, in turn, to the other's behaviours. The mesh of the predispositions of you both as negotiators helps to determine how each of you perceives the other's motives and intentions and how sensitive each will be to the other's behaviour. Through this process, as time goes by, the role of your own personality as the main determinant of your own behaviour diminishes.

I conclude that outside of a psychology laboratory, instead of this complicating and possibly unresolvable personality puzzle, it might be simpler to rely on your direct observation of how the other negotiator actually behaves in front of you, rather than rely on an analysis of his personality which may not even manifest itself.

10.4 A Trainer on Personalities

Trainers, not wishing to cast aside a theoretical construct that could have rich pickings for those gifted enough to be able to use it, have tried to simplify the identification of negotiators' personalities. While these simplifications are commendable they still do not address the question of how to grapple with 16 possible combinations of personality in a two person negotiation, or the many more combinations once multi-person negotiating teams come into play.

Of the various contributions of practitioners and trainers to personality styling, I shall, because of its provenance, select the work of Andrew Gottschalk, who taught for many years at London Business School, and has run negotiation seminars for

senior business leaders since the early 1970s. He is familiar with the experimental research normal in academic psychology and has had an extensive association with high level business negotiators. In short, he is highly credible.

He supports his four comprehensive psychological styles on two other behavioural concepts that he calls the 'habit zone' and the 'managed zone'. These concepts are a step towards what I consider to be the behavioural (1993, *The Negotiating Guide*, London: Group A. G) approach that I advocate, but Gottschalk remains (1997) stubbornly linked to psychological typing.

Habits, Gottschalk observes, change slowly – after all it took a long time to form your core beliefs into their current shape – but your managed behaviour can change speedily to suit circumstance. And your attitudes to a specific event can override your beliefs about norms and values. Your habit zone is fixed in the short run but you can expand the managed zone of your negotiating behaviour by widening the repertoire of effective behaviour through training in those new skills not commonly produced by your particular personality style. This welcome conclusion weakens the case for personality typing because if behavioural training can modify personality (as, indeed, I believe that it can), what is the case for identifying the four personality styles?

In a negotiation, you display a mixture of your habit and managed behaviours. The more in control you are the more you adapt to the requirements of the particular negotiating situation and the specific behaviours of the other negotiators. Your personality style, which you relapse to in moments of loss of self-control, is overridden by your behaviour.

Gottschalk identifies four main styles (Table 10.1) and specifies that each style has both positive and negative attributes that work for and against their impacts on the negotiation.

Table 10.1 Gottschalk's Four Personality Styles

1	tough
2	warm
3	numbers
4	dealer

Gottschalk defines style as:

> the way we come across. It's the pattern of behaviour that other people see and hear when we negotiate. Each negotiating style is a recognisable "bundle" of behaviours.

He asserts that your negotiating personality style comes from your genetic inheritance, upbringing, social background, education and training, national culture and job experiences. He also acknowledges that you do not neatly fit into one single personality style 'but most of us come pretty close to one or other of them' such that 'we have a 60-80% fit'. This presumably means that up to 40 per cent of your personality fits into another personality style, with a possibility that it is spread

across several other personalities. This is another disconcerting problem for using styles to improve performance. A slight misreading of somebody's behaviour that supposedly links with their personality can mislead you as to their personality type if you accidentally identify their minority personality! Errors at this level of sophistication are potentially catastrophic if, in turn, they determine your own behaviour towards the person whose personality you have just misread.

Gottschalk also asserts that people can only change their styles by cathartic events and mentions a mid-life crisis, a major career change or a bereavement, as examples. But could you experience some event, slightly less than cathartic, just enough to switch a few percentage points from your previously dominant personality typing to your previously minority personality style, and thereby shift the balance of your personality? Someone who became temporarily depressed by some event could switch personality styles for a single negotiation only. Unless you know this about them, your assessment of their personality type is flawed.

Let's take a brief run through Gottschalk's four styles and then you can judge their practical value (bearing in mind that Gottschalk is probably the most credible original source for this approach).

10.4.1 The Tough Style

The **tough** style is played by a dominant, aggressive and power-oriented person. Positively, the tough negotiator is clear in what she wants, likes to take control and exudes 'presence' to control agendas. She does not avoid conflict and is decisive in a crisis. She has stamina, can seize opportunities as they arise and is a risk-taker, competitive and assertive.

On the negative side, she is off-hand ('take it or leave it') and is unconcerned by how others think or feel. Her assertiveness runs easily into aggressive traits – bullying, threatening and coercive, she argues too readily. Easily upset if she does not get her own way, she can criticise unfairly, make impulsive decisions and enjoys manipulating others. She is inflexible and obstinate.

In dealing with a tough stylist, Gottschalk advises that you should avoid small talk, emphasise common goals and give them recognition (but something short of flattery). You should slow down the process in case you get 'bounced' into something. You do not have to give in and you can say 'no' too.

10.4.2 The Warm Style

The **warm** style negotiator is supportive, understanding, collaborative and is people-oriented. He is friendly, interested in other people, listens well and is good at asking questions. He understands the needs and values of other people and emphasises common goals. He will support proposals from other people and bring them into the decision process, while being self-effacing about his own contribution. He is trusting of others and seeks and takes advice. He is patient and calm under pressure and is generally optimistic.

On the negative side, the warm stylist seldom puts his own views or what he wants in a negotiation, being too concerned with relationships. He can be soft on

the issues, even personally submissive, and can jeopardise his own interests. He is not credible in the making of threats – even apologises for appearing to make them – and easily becomes disillusioned. His trusting traits can slip into gullibility, and he is a dependent joiner and follower. He relies on time to solve most problems, prefers 'jaw, jaw' to 'war, war' and panics under pressure.

Gottschalk advises that to deal with a warmer you should build trust but keep a friendly distance. You should trade information to get them on your side, but ask for more, only putting on pressure if it is necessary, and go slowly, continuing with caution. You should also check with him that his colleagues will agree to deliver whatever it is he offers to arrange.

10.4.3 The Numbers Stylist

The **numbers** stylist is analytical, conservative, reserved and issue-oriented. She has a good grasp of the fact, logic and detail. Mainly concerned with the practicality of the deal, she weights the options in a methodical and orderly manner. She always prepares well and is well organised with her files and notes. She is confident of her analytical skills and is a valuable technical resource in a team negotiation. She is strong on evidence and on practicality (will it work?) and is difficult to upset emotionally. She is good at side-stepping issues and blinding you with 'science'. When she says 'no' she hides behind official policies, procedures and briefs.

Negatively, she is emotionally cold to others and does not volunteer information and considers that a 'yes' or 'no' suffices. She will not decide until she has number crunched the data and can find it difficult to 'see' the problem rather than focus on tiny details. She can suffer from 'analysis paralysis'. She is impatient with the sloppy arguments of others and will question their logic before offering her own reasons for or against their proposals. She can be obsessive and pessimistic.

Gottschalk advises that you build and use the agenda to keep it moving and refrain from parking it to return to it later. You should take an interest in her 'facts' as they might reveal more than she thinks. If you do use numbers at all, make sure that they are accurate, as she cannot pass a set of numbers without checking the count. Emphasise mutual gain and show respect for her expertise.

10.4.4 The Dealer

The **dealer** is flexible, compromising, and oriented to the results. He sees opportunities and ways to make it work. With charm and almost cynical manners he deploys formidable persuasion skills and avoids giving offence. His adaptability and flexibility make him open to new ideas and can be imaginative as well as pragmatic. He is above all articulate and a fast talker, who thinks on his feet and will use any available argument or fact to make progress.

As a dealer he can be too much of a compromiser, an 'all things to all men' debater, and can sacrifice his own interests, perhaps from insufficient consideration of the details. He shifts positions too fast, too often and can thereby seem to be too tricky, insincere, even too clever by half.

Gottschalk's advice for dealing with a dealer is to be positive and focus on your target, even repeating your demands. You must prepare to trade information and let them talk to collect more information. You must avoid being side-tracked, so summarise and take notes.

Do you recognise any of these personalities in the people with whom you deal? Can you see your own style in any one of them? Check them out with people who know you and ask them to select one that covers your personality. After that, study Gottschalk's recommendations and see if, in practice, you can apply them to people you negotiate with over the next month. It is, after all, a purely empirical question of whether it works for you or whether you can make it work for you with some degree of effort.

Your personality consists of mixed degrees of one or all four of the personality traits (maybe you are a *warm dealer* with *tough* tendencies and a nagging weakness for *numbers*?). The unbalanced mixture or degree of adherence to the same trait could reverse your predicted behaviour into its very opposite – from hyper-co-operative to highly competitive, for example. Therefore, I have the same reservations about the effect of your personality traits as I have about the feasibility of predicting your behaviour from whether you are culturally a Japanese or a Belgian.

Exercise 10C

Why could this conclusion be drawn between predicting how different personalities will react and predicting how people from different cultures would react?

If you can switch your behaviours as a result of the 'chemistry' (or lack of it) between personalities at the negotiating table, surely you can also switch between your own personality styles to suit circumstances? Might there not be a time to be 'warm', a time to be 'analytical', a time to be a 'dealer' and a time to be 'tough'? Why should you be the mere plaything of your so-called personality, as if nature hard-wired your personality into you like a robot? Might you be capable of switching styles at will?

Of course, the more consciously we can switch personality traits, the more effective we might become, but if all of us, whatever our personalities, can also switch or shade – even hide – our personality traits too, in so far as this manifests itself in our negotiating behaviour, we will have to do much more than merely consider the 16 possible combinations of the four styles and might have to consider umpteen combinations of varying shades of the four basic personalities.

10.5 Power in Negotiation

I shall discuss the influence of power, particularly why and how considerations of power influence your perceptions and how your perceptions influence your behaviour once you are face to face with the other party, when it is often too late to adjust your play to the emerging realisation of the power dimensions of your negotiation. I shall also examine in greater detail different approaches to power and highlight

those approaches that are of practical use, ignoring for the most part those theories that, while interesting, are of little practical value.

Like most other practical negotiating tools, the uses to which you can put ideas of power depend greatly on the available time and detail but, when the stakes are high and the outcomes are important enough, time spent on assessing the power balance before the negotiation opens, and re-assessing it during the face-to-face phases, is well spent.

Power, like the wind, is felt rather than seen. It is the ability to get someone to do something that they otherwise would not do and, we might add, the ability to stop them doing what they otherwise would. As a working definition this covers most situations that negotiators experience. It does not, however, amount to a practical guide. Left to the definition alone, you are high and dry in a choice between using power to get what you want, or, if you haven't got any, giving in and taking what you can get. That's not much of a choice. It's all or nothing.

We can modify the definition slightly to include your ability to resist the power of another, and re-assess power as the amount of resistance (however quantified) that you must use to overcome the exercise of somebody else's power. This at least introduces the prospect that power can be overcome when push comes to shove. You need not be a victim of somebody else's apparent power over you, which must be good news to all negotiators.

There is also a wider context in which power influences not only how you might overtly behave but also how it might influence your attitudes as a prelude to changing your intended or usual behaviours. This is why power is felt rather than seen. You intend, for example, to resist a proposal by your employer to cut your pay but following further consideration of the ability and intentions of the company to end your employment if you resist their proposal, you change your attitude from one of defiance to one of (albeit sullen) compliance, hence you submit without overt resistance. As nothing in your thinking process is visible to others, no overt use of power has been, nor needed to be, exercised by the company. But its power to change your intentions has an effect every bit as real as if it had been.

There are varying sources of power that help us to flesh out the above definition a little. Power as an ability to do something can come from different sources that motivate (positively or negatively) the person who feels it. Without exhausting the sources of power, we can look to the ability to reward you for doing what you otherwise would not do. This leads to the idea of power arising from the control of those resources that can be used to motivate you, such as money obviously. We can also cite rewarding compliance with the power of promotion, or the power of access to people whom you wish to meet or mix with, or the power that engenders hero worship, or sexual attraction, or personal loyalties, or simple love and affection, or the power that goes with title or rank, or the power of the state to enforce compliance with their diktats, democratic or otherwise.

French and Raven (French, J. R. P. and Raven, B. (1959) 'The bases of social power', in Cartwright, D. (Ed.), *Studies in Social Power*, Ann Arbor, MI: Institute of Social Research, pp. 183–205) systematised the sources of power into five types: reward power; coercive power; legitimate power; referent power and expert power.

Embedded in their sources of power is the relationship between the parties, through which power impacts one way or the other. Changes in the sources of power will change the relationship and changes in relationships alter the distribution of power. Power cannot function without a relationship to convey it from its apparent holder to its object.

This moves us closer to a practical meaning of negotiating power. We could suggest, for example, that negotiating power enables you to secure terms of agreement favourable to yourself, though this does not tell us if you have power or not, particularly when power manifests itself only as an outcome and not as something you can assess before the negotiation. By the time you know if you have power, it is already too late to exploit your knowledge. This is an illuminating though tautological concept of power and it is not practical.

What you require is something enabling you to assess the role of power in the forthcoming negotiation so that you can prepare tactical imperatives to deliver your overall strategy. Given that bargaining power infects all of your actions in the negotiation – some of which you control, some of which the other negotiator controls – you need to have practical means of analysing what you can do and what you must avoid. This is a big step forward to operationalising ideas of power. Negotiating is a process and the tactical moves play an important part in that process.

Negotiating power is subjective, it's in your head and, because there are at least two parties to a negotiation, it is in at least two heads. The items to be exchanged may be tangible or intangible, such as goods for money or honour and integrity, but the power dimensions that condition and affect your exchanges are wholly subjective and judgemental. I do not go so far as to deny *any* objective measure of power. A half-kilometre long queue of customers outside my plant is objectively a more encouraging sign of my market power than an absence of customers altogether. Your subjective perceptions of which of you has power, whether right or wrong, in my view play a greater role in your negotiating behaviour than any objective measure of power. And, as power only becomes available to you through your perceptions, your judgement about its relevance in your negotiations is purely subjective. With subjective judgement comes uncertainty and risk, both of which weaken the practical relevance of an objective measurement of power.

Epilogue

Personality is an interesting but controversial subject in negotiation. Some people consider that personality is important in determining both process and outcome, and some trainers include personality typing in their negotiating skills programmes.

Others believe that for all practical purposes, personality typing has little going for it. Some researchers agree with this assessment: 'There are few significant relationships between personality and negotiating outcomes' (Lewicki, R. J. and Litterer, J. A. (1985) *Negotiation*, Homewood, IL: Irwin).

Of course, no views can be decisive for all time. Maybe some new research will reveal something missing from current research methodology. But it would have to overcome the practical reservations that in a face to face interchange there is not a

lot of time – or room in the agenda – to identify accurately the other negotiator's personality and react appropriately.

Module 11

Culture and Negotiation

Contents

Prologue

11.1 A (negotiating) Tale of Two Cities

A Californian was sent to Japan to negotiate and close a deal with a local corporation. She was faced with a team of Japanese (male) managers on one side of the table with herself, alone, on the other. She answered their questions, addressed their previously expressed concerns and then made her final pitch. She spoke slowly as her words were translated and, having covered all the points including her prices, she finished, only to be met by silence.

Nervously, she took this as a rejection of her proposal (first mistake) and started speaking again, signalling that her company was not rigid on the prices she had quoted (second mistake). Still silence. So she became specific, identifying the prices that could be improved (third mistake). More silence. So she spoke again (fourth mistake) and no doubt would have gone on for longer but was saved from further price concessions by the Japanese chairman intervening and suggesting that the meeting be terminated while they considered what she had said. Her company did not get the business, despite her lowered prices.

How might the Californian's behaviour be explained?

A professor at INSEAD, Fontainebleau, Paris, commented that the Californian had made a major *cultural* mistake. Allegedly, the professor claimed, she had not allowed for the cultural fact that the Japanese side would want to reflect on the implications of her proposal and would normally withdraw politely at an opportune moment, or simply retire to a corner for a quiet discussion.

But was this a result of her cultural ignorance or a major negotiating mistake on her part? It could be both, of course. Correcting the cultural error for a Japanese negotiation, however, would not help her to avoid the same negotiating mistake elsewhere; correcting the negotiating mistake would help her wherever she negotiated.

With even a minimum of negotiating skills the Californian would have known that whenever you make a proposal you do not follow a silence with an elaboration of your proposal and certainly never follow with 'improvements' (i.e., unilateral concessions) to it.

That is true for negotiators in both California and Osaka. The INSEAD professor apparently assumed that negotiating skills are different outside California. They are not. Perhaps, the professor should consider whether the negotiator made the same negotiating mistakes in California? If she did, her company had a more serious problem than how to correct her mistake in Japan – she needed help to correct her negotiating mistakes wherever she negotiated.

Having stated her proposal, she should not speak again until the other party has responded. Silence in negotiation can be a powerful signal and is only intimidating to inexperienced negotiators from any culture.

Basic negotiating training would show her that she should not move from her proposal until she has heard the other side's alternative proposal. If she receives criticism, including a rejection, of her proposal, she is entitled to ask: 'Well, what would you suggest in its place?' And she should await the answer.

Her negotiating 'mistakes' would not be corrected by culture training and, by definition, whatever training she received in the specific cultural norms in one country may be inapplicable in other countries. She is now cleared to negotiate in Japan but what of elsewhere? Until she has corrected her negotiating mistake it would be unsafe for her to negotiate anywhere, including California.

Dialogue

11.2 Cultural Relativism

The cultural relativist believes that if you want to do business with people the world over, knowing about the differences between them is an obvious, necessary – indeed essential – advantage. However, the cultural universalist (that is someone who challenges the assertions of the relativists) believes that, while awareness of the cultural norms of the people you visit may be beneficial, your competence in negotiation skills is more important.

The process of negotiation is universal across all cultures. Different cultures may exhibit different nuances of red, blue and purple behaviours, much as the world's different languages use different sounds and rules of grammar, but the core intentions (red players take; blue players give; purple players trade) driving these negotiating behaviours are the same.

Culture, like personality, influences behaviour but neither fundamentally changes the universal negotiating process of 'obtaining what we want from someone who

wants something from us.' Culture defines a group and personality defines an individual, but neither culture nor personality defines negotiation as a phased process. I assert that there are no such phenomena as 'western' or 'eastern' negotiating *processes*, though there are many different eastern or western 'cultures'. Undoubtedly, there are differences in manners and courtesies and in the articulation (in different languages) of interests, values, wants, positions and expectations. These differences, while partly culturally determined, co-exist within the common four-phased process of negotiation (prepare, debate, propose and bargain).

Exercise 11A

Asian negotiators are often portrayed as being concerned with developing personal relationships with their counterparts before embarking on business relationships. By implication – and sometimes outright assertion – this is not a common practice of Western negotiators. Consider this apparent distinction while reading recent articles in the business press, or biographies of major business leaders, that describe the practices of powerful people in 'western', and especially US, businesses. To what extent would you say that they conform to the stereotype of ignoring personal relationships?

A stereotypical Chinese negotiator's exploration (and exploitation) of his relationship with the other party is not totally alien to an American negotiator's alleged preference to 'get to the point'. Competent American negotiators also explore and exploit personal relationships (as the vast US literature on the lives of prominent American business leaders testifies) and some Chinese negotiators are just as keen to 'get to the point' as their American counterparts – witness Chinese money dealers. American-trained negotiators would be surprised if a co-American jumped straight to her sales pitch before she explored whether her product was needed and whether she wished to deal with the buyer. How many times are the words used in US proposals that a deal is 'subject to status', i.e., the buying party must, among other criteria, prove its consistent record of paying its bills.

In very large markets, such as in North America and Europe, the intense division of labour precludes personal knowledge of every player by every other player. Only relatively small markets, with high levels of vertical integration and close family and near family ties, are conducive to dominance by traditional personal relationships, making negotiation outside the favoured few players a game of reducing mutual suspicion and building trust. What the cultural relativist sees as highly significant in a specific culture or country appears to be less so to a universalist who sees commonalities between countries with similar socio-economic levels of development.

For example, traditional personal relationships are cemented by continuous, often life long, reciprocal favours in Chinese business, administration and politics. It is called Guanxi (pronounced 'Gwanshee') in Chinese and cultural relativists have contributed a vast amount of information about this phenomenon, almost giving it the mystique of something uniquely Chinese.

A contrary view asserts that the existence of Guanxi reflects limited resource allocation by market prices in China until relatively recently. In the absence of impartial and anonymous market prices as the chief tool of resource allocation, the

alternative of allocating resources, including official permissions and licences through Guanxi networks, is not surprising. To get things done in Guanxi networks the rule becomes that it is not 'what you know but who you know'. In the absence of price allocation, personal relationships are more valued than market efficiency.

While officially disapproved of, Guanxi allegedly permeates all business and public life. The obverse is that an anonymous rival's quiet but powerful Guanxi relationships may mysteriously block your project – you have chosen the 'wrong' partners since they don't have the right, or enough, Guanxi!

Rising commercialism and growing reliance on markets in China explain why Guanxi is reported to be in decline, particularly among younger more market oriented Chinese. What was until yesterday the epitome of Chinese culture is ceasing to be so today. Cultural relativists are left stranded as the exponents of special cases. Negotiators, as exponents of the enduring and universal phenomenon of negotiation as a four-phased process, are not required to revise their concepts as economies develop.

11.3 Do People Negotiate in Different Processes?

It is understandable but misleading to assume that people from different cultures negotiate by means of different processes. Certainly the contrary and, perhaps, counter-intuitive hypothesis is supported by field research.

Philip Gulliver's *Disputes and Negotiations: a cross-cultural perspective* (1979) compared the negotiating behaviours of the Arusha people in Tanzania with those of employers and unions in the United States. That the cultures of these peoples are different would not surprise anybody familiar with both countries. The Arusha people live in a low technology, traditional and relatively poor economy (in per capita GDP terms); US employers and labour unions live in the highest technology and richest economy (in GDP terms) on Earth. Gulliver analysed the culturally disparate negotiations in both countries as an eight-phase process, which he found was common to both groups. In 1988, he restated his researched conclusion that the negotiating process was universal.

The similarity of Gulliver's 8-phase model (1979) to my independent discovery of an 8-Step model (1970–74) suitable for analysing the labour negotiations in an oil refinery in England and labour and commercial negotiations in a brewery in Scotland (two quite different cultures – one capital intensive, the other labour intensive) supports the contention that the process of negotiation is universal. If researchers examine similar phenomena (the conduct of negotiations) they often come, quite independently, to similar conclusions.

Nobody to date has reported evidence to sustain the cultural relativist's assertion that there are different negotiating *processes* at work. Some, however, assert that culture must make a difference, apparently because cultures are, well, different. Yet, if culture is partly formed by history and history of necessity changes, then culture itself will change over time and the absolute certainties as to how to behave in negotiation with different cultures will dissolve.

It is not only culture that attracts sweeping assertions and intuitive truths. Allegedly, for example, women are inherently co-operative (blue) and men competitive (red), yet the evidence for these assertions is of the 'it must be true' kind; men and women are different, ergo, they negotiate differently. Long runs of plays of the red–blue game show no tendency for women as a group to play differently from men as a group. You cannot predict how the women in a group will choose between red and blue in round one, nor can you predict the sex of those pairs (about 8 per cent) of the group who will achieve a blue–blue maximum score. To assert, therefore, that the conduct of a negotiation is changed by sex differences is as mistaken as to believe that, because an individual's conduct is different in some respects, it must be different in all respects. Some women are 'red' players, others blue, and some men are blue players and others red. And women and men trained in the distinctions between red and blue behaviour can become consistent purple players.

It is important, however, to recognise the existence of cultural diversity and it is advisable to acquire knowledge of the relevant cultural imperatives and how they interact for working in, or managing, a group of culturally diverse employees. Ignorance is never bliss, and it can be positively disastrous in certain circumstances. Cultural knowledge has the same significance as that of language fluency but fluency will not save you if your negotiating skills are primitive. It is more important, therefore, that negotiators understand the universality of the negotiating process if they are to make sense of the cultural conflicts sometimes evident in their negotiations. Cultural relativism misses the target.

11.4 What is Culture?

There are many definitions of culture (researchers list 500), and most of them are unsatisfactory. Because culture might orchestrate behaviour, it may be worthwhile for negotiators to consider if the values, beliefs, shared meanings and attitudes of a group determine in significant ways their negotiating behaviours. There may be other explanations for variations in people's behaviour. Understanding what causes certain behaviours is always helpful. Moreover, if the influence of culture on behaviour is ignored, we might act on irrelevant but biased cultural assumptions and thereby frustrate our efforts to secure important agreements.

Culture is about those values, beliefs, self-justifying assumptions and 'world views' of members of the distinctive groups with whom we deal. Culture encompasses their histories, received experiences, accounts of events, political perspectives, myths, folklore, collective memories, religious or mystical ideas, philosophical outlooks, rituals and social preferences. This is quite an agenda if you are from another culture, even assuming you could learn much within the time that you have available.

All of us put our different 'cultures' on display to suit circumstance. The language and subjects we discussed in the school playground were different from the 'language' we might have used or the subjects we might have discussed in front of our teachers, or in front of our parents and grandparents at home. We speak about different subjects with our work mates from those we discuss at home with our

families and our children and the conversations and the views we share with colleagues are not the same as those we have with our bosses.

Only in the most general and nominal sense, therefore, can outsiders access another culture's imperatives unless they are able to devote considerable time and resources to its study. You can become superficially 'fluent' in another culture's imperatives but, except for a small minority of exceptionally gifted people, you are unlikely to become a cultural 'polyglot' in more than a very few cultures. And if you are a cultural polyglot – or remarkably 'fluent' in a particularly important culture – you have a commercial interest in endorsing the concepts of academic cultural relativists.

Consider your own culture in which, presumably, you are 'fluent'. Your understanding of what it means to be a member of your culture is controversial, particularly with people who nominally share your culture. All cultures to some degree are riven with controversy and, though their members have common experiences, they do not necessarily interpret those experiences monolithically. Undoubtedly, you share certain cultural imperatives with others in your group, but it is doubtful that you share everything conceived as defining your culture. Your differing views are part of the rich tapestry of your shared cultural life!

Differences between a country's sub-cultures are likely to be too subtle for visitors to recognise on short visits. Do you recognise, for example, the cultural differences between citizens of Glasgow and Edinburgh, cities only 45 miles apart? And what of the differences between Scottish and English citizens, especially concerning such mundane matters as football results. It is often said by Scottish citizens that they support the Scottish team at football and any team playing against England! Yet as citizens of the United Kingdom they would be lumped together by cultural relativists (from distant cultures) as sharing an identical culture. But the constituent nationalities of the UK (the English, Scots, Irish and Welsh), plus several generations of ethnic minorities who are British by birth and upbringing, do not act culturally in the same manner in business, community and family matters. Extending this phenomenon to other countries larger in population and territory (e.g., China, United States, Russia, Nigeria and so on), we cannot be sure that the negotiator across the table from us conforms in any reliable way to the norm a cultural relativist would impute to her just by identification of her nationality.

Exercise 11B

Consider your own country of residence and think of the extent to which it has different 'mini-cultures' within it. For example, how different is the behaviour of people who could be categorised according to:

- their domicile or upbringing being predominantly rural as opposed to urban?
- whether they live in the capital city or in one of the provincial cities?
- whether they have a life style associated with the 'upper' class or middle class or poorer classes?
- whether they are members of the majority ethnic group or are from one of the minority ethnic groups?
- whether they hold to secular views about the world or are devoutly religious?
- whether they have been formally educated to postgraduate levels or are minimally literate?

How many of these differences in your country or from your life experiences would you say were of marginal significance, informal and humorous, deeply divisive and serious, of recent or historical origin?

Aggregating people from a culture is problematic. The people across the negotiating table may be Japanese, Russian, American, French, Nigerian or Columbian and your cultural assumptions about them may be invalid before you exchange greetings because those on the other side represent people who fit into many of the different categories indicated in the Activity, without your being aware of the differences or their significance. 'Cultural awareness' can complicate an already complex situation in a negotiation.

Anthropologists warn rightly against ethnocentric conclusions about other cultures. Each cultural identity has several 'dialects'. And just to complicate the problem, other factors (beliefs, attitudes, experiences), which always remain invisible to those ignorant of them, influence particular behaviours of individuals, either by countering or reinforcing their cultural imperatives. Not all Chinese, or Swedes or Americans behave the same in similar circumstances. In addition, personality may intrude to some extent in negotiation, as may the type of organisation (a capital intensive business operates differently from a labour intensive business) or state structure (the norms in an Islamic state may differ from those in a secular democracy). It becomes close to unmanageable to predict negotiation behaviour from a person's cultural identity when varying shades of personal awareness of ideology, politics, theology and history are brought to the table in a complex mix of what influences that particular individual.

Kevin Avruch (*Culture and Conflict Resolution*, 1998) put the difficulties of this problem in perspective when he wrote that knowing an individual's culture (he is Mexican) does not permit you to predict his behaviour. He may have many 'cultures' and even if you know that he's a United States educated engineer, of southern *indio* background and an evangelical Protestant in Catholic Mexico etcetera, you could still be wrong in your predictions. And even when you know him fully as a person you still cannot predict his behaviour.

Exercise 11C

Would you say that you conformed to the norm for people from your country? Try to define the 'norm' for your country. How many people do you know who are members of your own culture who do not conform to the norm of that culture?

In studying the role of culture (and any other influence on negotiating behaviour) you embark on a vastly complex field, much of which is still tentative, deeply controversial and weak in applicability, even after forty years of earnest endeavour by hundreds of researchers and thousands of practitioners.

11.5 The Cultural Relativists' Challenge

Richard D. Lewis (*When Cultures Collide: managing successfully across cultures*, 1996) persuasively argues for the significance of culture in international negotiations. He claims that 'the moment international and intercultural factors enter into the equation, things change completely' because 'nationals of different cultures negotiate in completely different ways'. Is this assertion true? How different can we be without being completely different?

The influence of culture on negotiation is analysed on two levels. The impressionistic analysis describes the varying manners, courtesies and curiosities of everyday contacts between people from different countries. Roger Axtell's *Do's and Taboos Around the World* (1990) was compiled from 150 Parker Pen Company's offices, and is the best example of this genre. The other, scientific, level incorporates detailed analyses of attitudes according to national origins. In both these levels it is common for the authors to equate membership of a 'culture' with the national origins of the people they write about. But a person, who has one national origin, may be influenced in behaviour by many 'cultures' in a lifetime.

In the 1970s, social science discovered data processing. Data were collected, processed and correlated until fascinating associations were uncovered. Reports galore rained down. Mercifully, a finite supply of paper constrained its publication. Simplistically, in the inductive method of data analysis, you collect data, identify shared characteristics (age, sex, social strata, educational attainments, national origin, religion, or whatever) and then exhaustively correlate the characteristics using computers.

Geert Hofstede's work was of an exceptional quality. In 1966, he accessed data extracted from 60 000 employees of IBM, located in 53 countries. A second survey was undertaken in 1971–73, covering 30 000 of the original employees and 30 000 new ones, or, in all, 90 000 people. He published his results in his classic *Culture's Consequences: international differences in work-related values* (1980) and showed that attitudes and values varied with the nationality of the respondents (presuming nationality is a surrogate for culture). He defined culture as the 'collective programming of the mind which distinguishes one human group from another' and initiated the scientific study of the impact of culture on business behaviour.

Table 11.1 Hofstede's cultural differences using four indices

		Examples	
Dimension	**Measure**	**High**	**Low**
Power distance	tolerance of unequal power distribution	Philippines India	Denmark New Zealand
Individualism *v* Collectivism	degree to which the individual is the focus	Australia USA	Venezuela Pakistan
Masculinity *v* Femininity	extent to which values are masculine	Japan Austria	Netherlands Sweden
Uncertainty avoidance	extent to which they are comfortable with ambiguity	Greece Portugal	UK Canada

Source: G. Hofstede, *Cultures Consequences*: international differences in work related values, Sage, 1984; extracted, summarised and re-arranged from Figures 3,1; 4.1; 5.2; 6.1.

Cultures with greater power distance tolerate unequal power distribution. Hofstede included in power distance such inequalities as exist in physical and mental characteristics of individuals, their social status and prestige, their wealth, the exercise of political power, and how laws, rights and rules may operate in their favour. He used the concept of power distance to measure the interpersonal power or influence of bosses over subordinates in 40 different countries. Strong individuals strive to increase their power distance over others. However, the weaker the power distance between individuals the stronger is the tendency to reduce power distance and the weaker is the tendency to display deference to 'superiors'.

Hofstede found that there was a high tolerance of unequal power distribution in the Philippines and India and markedly less tolerance of power distance in Denmark and New Zealand. Since the 1960s there may well have been a decline all over the world in tolerance for power distance, which relates to the sustained growth in the world's economies and is reflected in the collapse of Soviet communism and the spread of various degrees of democracy in Latin America, Asia and South Africa. In the traditional democracies too, there has been a noticeable decline in social deference. These findings again suggest that cultural imperatives are fragile.

Four methodological questions arise from Hofstede's data.

1. Is the absence of domestic tension a reliable measure of the degree of tolerance of the status quo and how stable over time (a few decades) is a particular status quo?
2. What happens to the index of tolerance when a country with high inequalities in social status and prestige, wealth and political power experiences social turbulence?
3. To what extent is the index of tolerance influenced by an absence from the 1960s sample of IBM employees of, say, the Muslim minority in the southern

Philippines, or the Dalits ('Untouchables') in India, or the Maoris of New Zealand?

4. How might the indices of these measures change through time?

Of the 20 countries in the sample with the highest tolerance of power distance, five were secular democratic and fifteen were to varying degrees 'authoritarian'. It may be, therefore, that an index of toleration reflected (transient) political controls in 1966–7 rather than a lasting 'cultural' difference, particularly as 13 of the 15 are now (2001) classifiable as secular democracies. Negotiators cannot rely on cultural attributes that change on this scale within 20–40 years. These attributes appear to be political and not cultural and far from following unique cultural influences also appear to follow similar socio-economic trends associated with development and experienced by many diverse countries.

Hofstede asserts that individualist results-oriented cultures (USA) focus less on relationships than collectivist cultures (Pakistan). The relationship between individuals and the collectivity of their society, he suggests, influences the norms, or values, attributed to that society. Hofstede noted how China (then under Mao Tse Tung's political influence) was hostile to individualism, while American society, valued individualism highly.

- How much of this is a political consequence of each country's economic structure and how much can be attributed to its 'unique' culture? China has long been 'collectivist' on this index because it has a long history of authoritarian governance. The United States since 1783 has been a secular democracy following a couple of centuries as a colony. It has not had a 'collectivist' political structure or an authoritarian government. Change either of these influences and the index of individualist versus collectivist rankings would change too.
- There is a time line suggesting a linkage of this dimension to changes brought about by commercial development, a movement towards secular democracy and pluralism and the legitimisation in law of concepts of human rights. That this is the case can be seen in the gradual opening of China towards the global economy; we would expect this to accelerate 'cultural' changes as China's membership of the World Trade Organisation (WTO) takes effect in the next few decades.
- Traditional collectivist societies that move through commercial development (globalisation) towards individualist societies (what Hofstede describes as the difference between *Gemeinschaft* and *Gesellschaft*) will dramatically alter this index. Because such changes will alter their 'cultures', how deep or shallow are cultural differences? Also, and thankfully, because negotiation processes are universal there will be minimal, if any, requirements to change either party's negotiation behaviours.

'Masculine' cultures, according to Hofstede, are more competitive than more caring 'feminine' cultures. This is the least convincing of Hofstede's indices. It reads somewhat dated forty years after the data were collected. Hofstede reports his difficulty in collecting statistically significant data for calculating the index because of the relative paucity of female employees in many of the occupations he studied in IBM in the mid-1960s.

Exercise 11D

To what extent would you expect the index to change if the data were re-run today following the substantial changes in the sex composition of the work forces in developed economies in recent decades?

Given that proportionately many more females have joined the workforce – in some occupations, females account for fifty per cent or more of the employees (law, education, professions allied to medicine and magazine journalism) and females are now sizeable minorities in other occupations, including higher management, senior public servants, police and the armed forces – we should expect such indices to change substantially.

Hofstede introduced masculine and feminine characteristics – broadly against a 'nurturing' versus 'achievement' dimension – that conformed to traditional stereotypes of the roles of the sexes in society, work and management. The data were stretched to determine a 'masculinity' index that, interestingly, shows that 'masculinity' favoured larger over smaller corporations, individual over collective leadership, and firms that provided welfare support for their employees, all attributes associated with IBM in its heyday and suggesting the prevalence of a company as opposed to a country culture. Hofstede also identified employees' beliefs that promotion is based more on 'influence' than on 'ability', which is a common enough view in large organisations (*see* the *Influence* elective).

Hofstede's uncertainty avoidance refers to the extent to which employees are comfortable with ambiguity. Everybody feels the pressures of uncertainty – because we cannot predict the future accurately – and in so far as we rely on uncertain future events for our future daily necessities, and rely on our ambitions to access future power and prestige, we react with varying degrees of stress to uncertain guarantees that we will get what we want. As individuals, we do not accept with identical equanimity the gap between 'getting what we want' and only 'getting whatever we get'.

Hofstede used an index based on the extent to which employees in 40 countries adhered to company rules and procedures, their preferences for stable employment prospects and their attitudes to stress. These indirect data were illustrative of Hofstede's claim that the more uncertain we feel about our future prospects the more we try to avoid future uncertainty and his index of 'uncertainty avoidance' purported to measure our culturally derived attempts to avoid uncertainty.

He found Greek and Portuguese employees scored highest and Danish and Singaporeans scored lowest on the uncertainty avoidance index. And those most comfortable with ambiguity (Greece) were more laid-back (manana, manana?) than those (UK) so uncomfortable that they fretted over it.

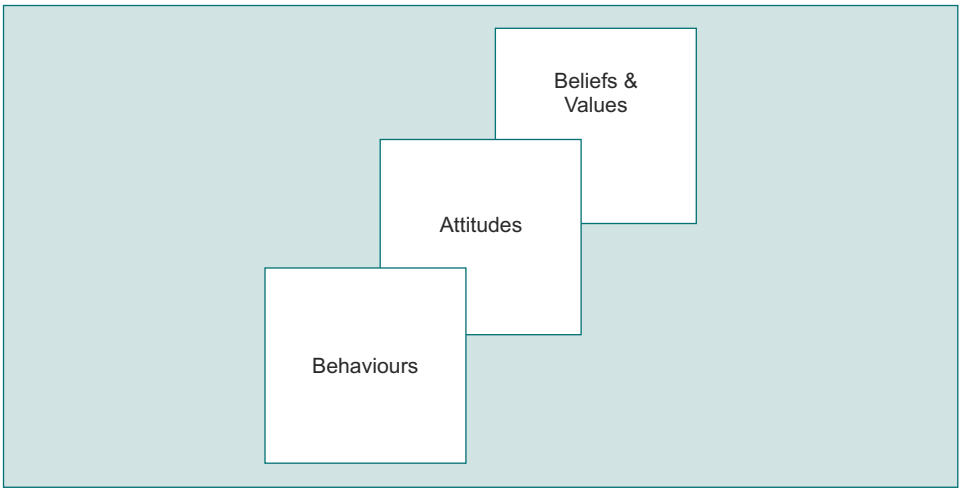


Figure 11.1 A simple model

There is a relationship between the three overlapping boxes illustrated in Figure 11.1 that are labelled Behaviours, Attitudes and Beliefs & Values.
'Behaviours' is shown at the front as a complete box because behaviours are the most visible of the three elements. You can see, hear and feel other people's behaviours, while you cannot be sure of their private attitudes and beliefs.

People are aware of your behaviours when they are affected by what you do. Even if they cannot identify you individually as the perpetrator, because perhaps you are a 'faceless bureaucrat', they will know that something has been done to them, particularly if your behaviours affect them negatively. Negotiators are likely to know when they have been cheated or threatened, or when somebody has taken advantage of them.

With attitudes it is significantly different. Attitudes can be hidden even in confidential surveys. Attitudes that you choose to reveal to others are less reliable indicators of your true intentions than is your behaviour. In the red–blue dilemma game nobody misses your behaviour when you play red to their blue. Subsequent explanations for your playing red – a 'mistake' or to 'protect' yourself, etc., – are less reliable than the fact of your behaviour and its result: they lost and you gained points at their expense.

It may be convenient to express a certain attitude in order to acquire (undeserved) moral approval. It might also be dangerous in some circumstances to express attitudes that are contrary to those in a position to hurt you. In such an unhappy case, rather than risk harm by expressing your true views, prudently you show only the approved attitudes.

Negotiating experience shows that some practitioners express attitudes that bear no resemblance to their intentions. They speak of trust but they intend only to deceive. While negotiators do not always, or predominantly, act with deceitful intent, you have no way of knowing for certain if you can rely solely on what they say. This makes people's professed attitudes an unreliable guide compared to their

behaviour and compromises to some extent surveys based on the professed attitudes of respondents.

Behind your attitudes stand your relatively firm beliefs. Where attitudes can be thought of as short, coded guides to instant behaviour – 'leave the tidying up to my sister', 'be polite to elderly people', 'never give a sucker an even break' and such like – beliefs are more robust and much more complex.

Belief systems take longer to form than specific attitudes. They tend to form in your early and formative years and because of the relative ages of those who pass on the beliefs and value systems of a community and those who receive them, beliefs tend not to be challenged in the early years. They are handed down from generation to generation and sometimes are forged in the rebellion of one generation against another, which the older generation regards as a degeneration in society's moral values, and the younger one regards as a liberating influence of them.

Behaviour can be arbitrary, attitudes can be contradictory and beliefs can be hypocritical in practice. Much of the human treasure of its literature and art is about these very human characteristics – what else would be as interesting to dramatise? Drawing conclusions from attitude surveys and belief statements is risky if these are interpreted as synonymous with how negotiators behave. As misleading is to explain particular behaviours in terms of the professed attitudes or beliefs of a particular 'culture'. These behaviours may be completely explained from within the universal paradigm of negotiation and do not require tenuous connections to specific sets of local attitudes and beliefs.

Note that Hofstede's model did not research into the impact of culture on negotiating behaviour. His was a study of attitudes and values, not behaviours, and it is vulnerable to the above comments on the reliability of their relationships. This qualification has not prevented brashly confident inferences being made by others that the impact of culture on negotiation is 'obvious'. Typical of these is the assertion by Dean Allen Foster (*Bargaining Across Borders: how to negotiate business successfully anywhere in the world*, 1992) that Hofstede's four dimensions of culture have 'particular importance for us when we negotiate across cultures' (p. 265). But Foster gives no evidence in support of his assertion.

Take Hofstede's power distance, for example. The fact that high tolerance of power distance is found in, say, Mexico, does not make it a uniquely Mexican characteristic. Power distance is found to varying degrees in all cultures, but is especially prevalent in authoritarian examples. Hofstede's method is no more than a sophisticated analysis of attitude surveys. It is possible for a significant minority of the Mexicans in the sample to have as low a tolerance of the prevailing power distribution as the majority of Danes, without compromising the finding that proportionally more Mexicans have a higher tolerance of power distance than most Danes. But a negotiator may not know for certain with which part of the sample labelled 'Mexican' or 'Danish' she is negotiating.

Likewise, a particular culture may demonstrate a high incidence of red negotiating attitudes and behaviour, with a significant minority demonstrating a high incidence of blue attitudes and behaviour. But in negotiating with members from a particular culture it is more beneficial to be trained to deal with red and blue negotiating

behaviours than it is to be trained to identify ascribed characteristics according to national identity, leading negotiators to assume mistakenly that the individuals who happen to be at the table share these ascribed cultural imperatives. Knowledge of alleged cultural ascriptions does not enable a negotiator to deal with people practising red or blue behaviours. Indeed, anticipating incorrectly a cultural ascription and confronting universal behavioural traits without knowing how to deal with them, is worse than ignorance of the alleged cultural differences.

Sloppy attribution by implied association is common when linking culture and negotiation. That some authors have immense knowledge of different cultures is not challenged – their books are fascinating – but they mislead practitioners with their assertions that cultural characteristics, while such as when a member of a particular national group is driving a motor vehicle, are also true when that person is engaged in the altogether different activity of negotiation.

An allusion, for example, to prolonged adjournments while Japanese negotiators consult with superiors, is presented as if stereotypically the impatient American is driven to distraction waiting for an answer. How familiar are these authors with business negotiation? People negotiating at senior level on high value projects do not expect immediate answers. If they do, they will be disappointed no matter what their culture. The lengthy delays which occur while seeking confirmation from levels of authority not present in a negotiation, as with the Japanese example (if that is the real cause of the delay) is not so unusual for experienced negotiators as to be alien or stressful. They do not have to learn about Japanese culture to cope with these delays; among other things, negotiators should learn the elementary virtues of patience.

Fons Trompenaars conducted research into cultural diversity (*see* Table 11.2). His data were extracted from 15 000 managers of 30 companies in 18 countries, plus another 30 companies with offices in 50 countries. His books are essential reading for anybody in this field. 'Culture,' he writes, 'is the way in which a group of people solves problems' (*Riding the Waves of Culture*, 1993, p. 6, quoting E. Schein). He uses five orientations to describe the way culture influences how human beings 'deal' with each other. Trompenaars draws his conclusions from many examples of non-business interactions (which is what he means by 'dealing' with each other) and transcribes these to business negotiations (an altogether different meaning of 'dealing') with varying degrees of (im)plausibility. In addition, however, he provides helpful suggestions on handling value differences whenever you confront a different value system to your own in, say, handling diversity in a workforce.

His orientation of 'Rules versus Relationships' expresses different attitudes to a business contract. To a universalist, a contract is inviolate, while the particularist thinks it should take account of new circumstances. This orientation echoes Hofstede's 'Uncertainty Avoidance' Index, in so far as a contract reduces uncertainty about what a partner is supposed to do in the future. You might consider that contracts are fundamental to doing business and, if you have negotiated more than a few, you know how they can be unsettling. The problem is that contracts brutally summarise the distrust each side has of the other.

Table 11.2 Trompenaars' cultural orientations

		Examples	
Orientation	**Description**	**Former**	**Latter**
Universalism *v* Particularism	Rules rather than relationships	USA Switzerland	South Korea Venezuela
Individualism *v* Collectivism	The individual versus the group	Denmark Portugal	Indonesia Turkey
Neutral or Emotional	The range of feelings expressed	Japan Indonesia	Italy France
Specific or Diffuse	The range of involvement	Australia UK	China Singapore
Achievement or Ascription	How status is accorded	Canada UK	Nigeria Oman

Source: F. Trompenaars, *Riding the Waves of Culture: understanding cultural diversity in business*, 1993: selected, extracted and re-arranged from Figures 4.2; 4.3; 6.1; 7.6; 8.1; 8.2.

Now, as the negative reaction to the brutal imposition of legal contracts is usual in business cultures (USA, UK) that lay supposedly great store on contractual details supported by legal penalties for non-compliance, it is not really surprising that similar contracts can be negatively received in those Asian cultures more comfortable with informal ways to ensure compliance. Taking offence in negotiation exchanges is not unique to particularists. And while I am happy to accept Trompenaars' assertions of how a particularist might act when faced with a request from a friend to fake a restaurant review, or when faced with a moral dilemma that breaches the law over 'insider' trading, I am worried about transposing his conclusions from these hypothetical incidents to anyone's negotiation behaviour. What might happen in social interactions of these kinds may have nothing at all to do with how they react to the altogether different activity of business negotiation which is driven by other universal imperatives.

Trompenaars' individualism versus the Group dimensions is a fundamental choice, as can be seen in the Prisoner's Dilemma game (*see* Module 7). Here, the stark choice is to do what is best for the pair of you and 'not confess' (play blue), or do what is best for you and 'confess' (play red). The majority response (just over 51 per cent) to the dilemma game is uniform across all cultures, i.e., behave at the expense of the other player (only 8 per cent of pairs achieve a 'win–win' or 'blue–blue' outcome over ten rounds). The real point is that people orientation on the individualism versus collective dimension is not a safe predictor of their behaviour in negotiation. Individual choice of behaviour under risk apparently is more complex than one's cultural imperatives!

Trompenaars approaches the ascription of individualism versus collectivism indirectly, by asking questions about 'who is to blame for an accident?' and 'which is the best way to work, individual or team?'. This is an indirect and unsatisfactory way of measuring the characteristics of individualism versus collectivism particularly when the conclusions are to be used to estimate potential behaviours of the respondents – as a group! – to choices they may make when negotiating. As the distribution of countries on the individualist dimension varies from that given by Hofstede in his index thirty years earlier, this adds scepticism to the value of the predictions of the effect of cultural relativism.

Researched advice on the expression of feelings in negotiation (as quoted in Module 3 from the work of Rackham) is that it can be helpful to let the other party know about how you feel from time to time. Yet as a cultural imperative, emotional people are prisoners of their inclinations. Permanently excitable negotiators are rare, though individuals become excitable on occasion. Trompenaars uses the example of a Frenchman at a road accident engaged in a tantrum as if 'road rage' was unique to the French. On his scale the British are twice as likely as the French and the Japanese three times as likely as the Italians to be unemotional. Does road rage translate into negotiation behaviour? We do not know because this was not tested from direct observation.

Most negotiators, coming across an excitable performance from other negotiators, probably put this down to their personality or to the incident that provoked them. I doubt if it is foreign to what they have experienced before in their own cultures, so the alleged predilection for certain cultures to produce excessively excitable negotiators is unconvincing. Of course, you can stereotype certain groups (e.g., Italians are favourite targets) to permanent excitability, but you must have met very few Italians in business if you believe the stereotype applies to all Italian negotiators on all occasions.

The fact that the norm in certain countries is to be Specific (in the sense that a manager separates a work relationship completely from any other relationship the parties may have) rather than Diffuse (the social relationship of the manager permeates all other relations that exist with the subordinate) is interesting but how relevant is this to negotiation? In a negotiation between two managers from different organisations, the specific or diffuse relations each manager has with subordinates would be irrelevant to the relationship the managers had with each other. To some extent a diffuse relationship outside of the specific business deal may be helpful to securing the deal – and Trompenaars gives anecdotal examples of that – but it can also be embarrassing if the specific deal you are offering, on the basis of the relatively strong diffuse relationship, does not match nearly enough the other party's requirements! Buying old, unreliable technology from close friends, when you know of better alternatives can only go so far. People in the most diffuse culture will not buy unsuitable aircraft just because they have common interests with the seller, and nor might people in highly specific cultures buy merely on price–performance, just because 'business-is-business'.

If a person in a diffuse culture feels let down by the demands (or lack of demands) of a colleague, people in a specific culture might put this down to his or her

'moody' nature that is affecting this specific situation, and make the appropriate allowances for other occasions. That is the problem of the specific–diffuse divide – it is easier to relate it to different personality types we know well than it is to relate it to entire groups of personalities who happen to share a common country of origin and of whom we know next to nothing.

Trompenaars' example of the influence of ascription quotes an incident between a Dutch and a Japanese team where a member of the Japanese delegation fell ill:

> A member of the Dutch delegation approached Mr Yoshi, another Japanese delegate with fluent English and outstanding technical knowledge, and asked if [Mr Yoshi] would replace the sick man in a particular forum. Mr Yoshi demurred and the Dutchman was annoyed at the lack of a straight response. Several minutes later the leader of the Japanese delegation, Mr Kaminaki, announced that Mr Yoshi would replace the sick man because Mr Kaminaki was appointing him to the task. It was made very clear whose decision that had been.

This incident, however, is not just a cultural error peculiar to the Dutch; it is an error of protocol and an example of the crass insensitivity of one party effectively telling another party how to manage its affairs. Cutting across lines of command in any culture is an avoidable mistake in scout troops and in the high offices of state. There are some things you just do not do, and Trompenaars illustrates one of them. Head secretaries can get into a rage because somebody from another department appeared to tell them how to do their jobs, or managers can get into a rage because a supplier appeared to tell them how to manage their employees and, closer to home, loving siblings can throw a tantrum because one of them told her how to 'manage' her boyfriend.

Trompenaars' method of analysing data was to ask questions of groups identified by their national origins and to count as percentages for each nationality the number of responses that agree or disagree with his statements (some of which relate to everyday values or preferences and others relate more closely to business behaviour). He then ranks the percentages as bar charts in ascending order and from their resulting shape, derives his conclusions.

When the number of countries in each category cluster is at the extremes – a large group shows less than 40 per cent adherence to a particular attitude and another large group shows a greater than 80 per cent non-adherence to the same attitude, there may be a plausible claim that Trompenaars has found evidence for a clear difference between the two groups of countries, but where countries divide between a particular attitude such that one group shows a 50 per cent adherence and another group a 60 per cent non-adherence, it is less likely that there is a significant difference between the two groups. A slight shift of countries either way would either eliminate the supposed difference or exacerbate it. Where about half of a national grouping agrees and the other half disagrees with his value statement, it is not plausible to assert that the agreement/disagreement divide is evidence of a definite cultural characteristic.

It is a bit like the method that asserts that certain characteristics are evidence for a specific personality grouping (*see* Module 10), yet a small error or switch of mood or circumstance would put some people into one personality group and others (or the same people on a later occasion) into another personality group. For the negotiator, faced with weak evidence of personality trait or weak evidence of cultural imperative and making decisions on how to behave in the negotiation interaction, these are high-risk strategies, and are more likely to be damaging than helpful.

Cultural relativism's main weakness is that it makes its assertions without direct evidence from negotiations. A selective example of difficulties when different cultures interact does not show that their interaction has significance for the question of whether culture determines negotiation behaviour, or whether the outcome of poor negotiating behaviour is the same in all cultures.

An American cultural awareness speaker drew attention to an experience of a European beer company invited to Vietnam to negotiate the setting up of a brewing capacity for its famous beer brand. After several meetings the Vietnamese officials contacted the brewer's European head office and stated they would not deal with its representative anymore. He had 'offended' them. As a result it took five years to get the negotiations underway again and conclude them to the satisfaction of the officials (and no doubt, to the joy of their thirsty citizens). The speaker claimed that the (unspecified) offences of the representative demonstrated the need for European exporters and joint venture seekers to undertake cultural awareness seminars to avoid cultural errors.

Officials in authoritarian regimes are not used to people failing to conform to their wishes (that is why they are authoritarian), and there is a veritable minefield of potential errors awaiting visitors more used to challenging offers and demands in freer societies that may prompt claims that a negotiator has offended the officials' need for due deference. In some Chinese negotiations, for example, the charge that you are 'not a friend of China' might arise because you did not agree to an official's demands for unilateral concessions. If the charge does arise in a negotiation your chances of concluding the deal become more remote than if you cave in and comply, for which you may be awarded the high status of being a 'friend'. I suspect that what lay behind the demand that the beer company replace its representative with somebody more 'culturally aware', i.e., more compliant, had much more to do with his refusing to comply with demands for unilateral commercial concessions than any offence he might have caused to their national sensibilities.

There are many other explanations for deadlocks in international negotiations that have little to do with cultural ignorance, though they are unfortunately and mischievously presented as such by cultural relativists.

Exercise 11E

A joint venture negotiation between an Italian and a Scottish business illustrates the error of assuming cultural insensitivity whenever a negotiation runs into difficulties. The discussions in Edinburgh went well but at a reconvened meeting in Genoa they collapsed. The Scottish firm had sent out its senior negotiator but she and the owner of the Italian firm argued during a late evening social engagement. Afterwards, the Italian insisted, haughtily, on dealing with the Scottish 'boss' and not a 'junior' manager.

On the basis of the above would you say that the Scottish firm made a cultural mistake in sending a manager who was clearly junior to the owner of the Italian company? Should they have sent out their Managing Director instead? Or might there have been another reason for the collapse in the negotiation?

If you are told that the Senior Negotiator from the Scottish firm feigned (public) ignorance of what had upset the Italian owner, would this cause you to pause before jumping to a cultural conclusion? I would hope so because the full circumstances of what caused the late evening dispute, like an iceberg, were left diplomatically below the surface – and it had nothing to do with 'culture'.

11.6 Chinese Negotiations

Tony Fang (*Chinese Business Negotiating Style*, 1999) illustrates the technique of slanting commonly known negotiating structures into a classic cultural relativist format, allegedly not understood by 'western' negotiators. Interestingly, researchers into Chinese business apply a 'four stage' model to Chinese negotiation ('opening moves, assessment, end-game and implementation') recognisable by an experienced negotiator – and any student of this Elective!

Fang asserts (accurately) that the Chinese 'for centuries' have been adept in the 'subtle art of negotiating', but implies that this undoubted skill is unknown to, or at least known less by, Europeans. He is apparently unaware that Europe and the near East have negotiated with the Chinese since Roman times. He provides, for example, a list of 21 Chinese business-negotiating styles. Examples include: 'mask interests', 'price sensitivity', 'play competitors against each other', 'exploit vulnerabilities', 'show anger' and 'renegotiate old issues'. None of these styles is unknown to competent negotiators from anywhere in the world. Fang's '36 Chinese Stratagems and Tactics' would not surprise a competent negotiator from any culture (e.g., 'false authority', 'good-guy'–'bad-guy', 'masking interests and priorities', 'adjournments', 'pre-printed contracts' and the fallacy of 'sell cheap, get famous'). By linking each of these to ancient Chinese sayings (complete in his book with beautiful Chinese characters), Fang conveys the impression that China is unique in negotiation practice and, less convincingly, that all modern Chinese negotiators are steeped in its awesome folklore. China deserves the world's reverence for its many contributions to human civilisation over several millennia but not for a uniquely Chinese negotiating process unknown to others.

11.7 Unique Negotiations in India?

It is typical of the cultural relativist's approach to present advice on doing business in a specific country as if the advice is of unique relevance to negotiations with nationals of that country. Most often these assertions are questionable.

Taking one example from many, Sergey Frank, a partner at Kienbaum Executive Consultants, asserts that 'Indians are good and flexible bargainers and they expect their counterparts to be equally skilful' (*Financial Times*, 24 September, 2001). Sergey Frank speaks from knowledge of negotiating with Indian nationals, and while it probably does little harm to make wild generalisations in a newspaper article, such articles in a leading business paper add substance to the popular assumption that culture 'must make a difference'. If, however, anybody requiring advice in negotiating with Indian businesses acts on the basis that Frank's statements are in any sense *culturally* meaningful, they are going to be disappointed.

Are all Indian business negotiators 'equally' skilful? To ask is to answer the question: obviously not. Are all their counterparts from other countries equally skilful? Obviously not! So what does the statement mean? Not very much. To assert that all successful Indian business negotiators are 'good bargainers' boils down to saying that all good bargainers are good bargainers.

Sergey Frank's specific suggestions for negotiating with Indian nationals reveal familiar advice for negotiating with any nationals, which makes the writing of articles on negotiation from a 'cultural' perspective somewhat pointless.

Exercise 11F

You should 'respect the other side's dignity and authority', advises Frank. From which nationals should you withhold your respect? Can you make a list?

Moreover, he advises, 'during the exploration and information gathering phase, remember that the other side probably has a different view on disclosure of information during negotiations.' It is highly probable that the other side in any negotiation has a 'different view' on most things and negotiators should use the 'exploration and information gathering phase' (i.e., the debate phase) to check everything no matter with which nationals they are negotiating. For example, do the words used in the contract carry the same meanings and definitions, clearly state what is included and excluded, specify in which precise circumstances would this or that payment, penalty or prohibition apply, and so on? Asking questions for clarification and understanding is an essential attribute for negotiating with anyone, as the SAQSS sequence (*see* Module 3) mandates.

Sergey Frank advises avoiding misunderstandings by clearly establishing the agreed details and 'those still subject to a final check.' Sound advice, but the avoidable consequence of not taking his advice is not an error confined to India. It happens wherever negotiators act in a sloppy manner and forget the mantra: 'nothing is agreed until everything is agreed'. Attention to detail and using summaries of what has been agreed provisionally and, importantly, what has still to be agreed, are behaviours applicable everywhere.

In a statement of the obvious, Sergey Frank identifies the 'key element' of his advice for negotiation in India as 'the ability to listen'! Where then on Earth can an ability to listen be safely disregarded by a negotiator?

In this context, Frank thinks that Indians 'raise their voices when they talk to you' and 'act in an extrovert manner', which is a stereotype that can be applied to many other national groups with equal lack of substance.

Negotiations require patience and Sergey Frank believes this is most apposite for the 'concession-making phase'. My advice to negotiators everywhere is to realise that there is no phase dedicated to 'concession-making' – in negotiation everything is traded; nothing is 'conceded'.

Frank warns that as negotiations draw to a close, your Indian partners 'may push for a last bargain'. His advice is to offer a 'trade concession', which is a weak example of the 'traded movement close' (*see* Module 6). He advises you to 'try to keep something up your sleeve that can be easily traded'. If last minute concessions are a popular ploy of Indian negotiators who, in addition, are readers of the *Financial Times*, the conclusion they might draw is to make sure that the concession they seek is a large one, or at least larger than the one lurking up the foreign negotiator's sleeves. But given the widespread use of the traded movement close around the world, why this is thought to be a uniquely Indian negotiating phenomenon is not clear.

Sergey Frank's article demonstrates so clearly the case argued here that what passes in popular discourse as the need for a cultural approach to negotiation is largely falsified by the examples the culturalists use and the claims they make. The time spent pursuing unique negotiation advice for specific countries or cultures would be better spent on raising basic negotiation competences that have universal application in all countries.

Exercise 11G

Of the identified skills of negotiation from Frank's article that allegedly are unique to negotiating with Indian nationals, list in the second column those other countries where the identified skills may safely be disregarded.

Negotiating competence	Culture where the competence may be ignored
Respect the other party's dignity and authority	
Remember that the other party has a different view on disclosure of information	
Avoid misunderstandings by summarising the details	
Nothing is agreed until everything is agreed	
Listen carefully	
Do not concede, trade	
Use traded movement to close the deal	

Epilogue

First time negotiators switching jobs to a new business learn in time to cope with a new sector's idiosyncrasies because few people easily transfer from one to another. Businesses are not all alike. For example, negotiating oil and gas agreements for the first time introduces 'take-or-pay' and 'send-or-pay' regimes; negotiating lease agreements include 'time is of the essence' clauses; negotiating construction contracts use 'performance bonds' and 'liquidated damages' clauses; negotiating personnel contracts include 'termination for cause' and 'termination without cause' clauses, and go-between deals have 'non-circumvention' clauses. Becoming acquainted with the many idiosyncrasies of national and international business practice around the world is necessary for negotiating the outcome.

Cultural relativism reveals relevant and interesting 'things you should know' about the habits and manners of other societies (as well as travel guides for visitors). There is a large literature on doing business 'over there' and regular public seminars are offered too. (For a good bibliography, see: J. W. Salacuse, *Making Global Deals: negotiating in the international market place*, 1991.) And many of the 'things you should know' are in the same category as those that all competent negotiators must become familiar with if they really want to do serious business.

Flying from Edinburgh to Bradford, or New York to Houston, without knowing something of the way the people at your destination are likely to want to conduct their business would be lax to say the least. Flying from one country to another only compounds such laxity. In Spain it is useful to know, for instance, that a business meeting over dinner is not likely to be underway until after 10.30 p.m., or that breakfasts in France are not of the hearty American kind. Though late dinners and skimpy breakfasts won't change the negotiation process, they might affect your blood sugar levels while you endure them!

Travelling many thousands of miles into distant time zones without any knowledge of the cultural, climatic and geographical differences – the way they do and perceive things over there – is to climb a very steep learning curve on arrival. Thus, the 'things you should know' about other peoples is a vast and valid area of study. Likewise, doing business within your own borders requires more than a passing knowledge of the similarities and differences between firms and people in your business sector, and other sectors you might operate in over a long and, hopefully, distinguished career.

Purchasing procedures in different firms and business sectors in the same or similar cultures can be very different, as are the influences of the sheer scale of operations. Selling small value items to single decision-makers (a dozen bars of chocolate to single proprietor 'mom and pop' corner shops) is different from selling through multiple layers of decision-makers a year's supply of expensive high value components to volume car plants. Confidence that there is a peculiarly American 'wham, bam, it's a deal Sam' negotiating culture is only credible to people who have never tried to sell anything to General Motors! You will not find the negotiating process all that strikingly different when selling to US-owned Amerada Hess (oil) or to Japanese-owned Honda (vehicles).

To expect to walk into the purchasing office in a large US company and lay out your wares for an instant decision is naive. It just does not happen. It might in 'mom and pop' stores in America and Japan. In Japan, for example, being surprised at the time taken by local managers in 'getting to know you' activities as if it were a totally new experience cannot be taken seriously. Try negotiating in the American 'boondocks' or the Australian 'outback' (or villages in southern Italy) without 'getting to know you' sessions or favourable introductions from close family. Sure, the factors that might re-assure a Japanese firm that they want to do business with you may be different from some of the factors that re-assure an American firm making a routine purchase, but that is to be expected. It might also be the case that two American firms value quite different factors as prerequisites for doing business. For you, it's part of the process of learning your business, hopefully, better than your rivals.

For example, a global UK oil and gas firm competed with an Italian rival for a major operating contract in an ex-Soviet, newly independent state, just after the collapse of the Soviet Union. The UK firm's engineers inspected the oil refineries and declared them to be antiquated in technology and grievously inefficient in the use of labour. Most of the processes were of a vintage that pre-dated the 1950s, though it was the most modern plant in the former Soviet Union. Whereas a European refinery would require 1500 employees, these employed ten times that number! The UK engineers pronounced the refineries a 'disaster' and recommended heavy investment to bring the plants up to standard and an early mass shedding of labour to make them as economically efficient as a UK refinery.

As part of the deal the local leaders had demanded that the foreign operator provide schools, hospitals and medical services for the local population and also insisted that nobody was sacked. This was estimated to cost several tens of millions

of dollars. As far as the UK managers were concerned these demands were euphemisms for bribes.

How far apart could you get? Who had not prepared properly?

What the UK oil company failed to understand was that the leaders of that new country only held their positions by successfully providing goods, services and jobs for their 'clan' members. In this society, consisting of several clans without a welfare state, their clan leaders were the only source of social services for the population. The obligations of the clan leaders went well beyond the remit of private oil companies in Europe – everything the local leaders wanted for their people, for example, is provided in the UK by its tax-financed welfare state. But the ex-Soviet leaders were judged solely on their abilities to provide welfare support for their people. That is how their clan leaders survived communism and how they intended to survive under capitalism.

The Italian company properly prepared and reframed the local leaders' negotiation demands to reflect their historical interests and clan roles. Its bid included the necessary large sum in US dollars required for schools, hospitals and medical services. Unsurprisingly, the Italian company won the contract.

Now, the motives of the local leaders' requirements had to be appreciated if the oil company was to do business with them. Their interests (not their criminality) drove the negotiating behaviour of the clan leaders. Interests are drivers of negotiating behaviour in all cultures and all negotiators always do better by searching for the other party's interests and constructing proposals to address them (*see* Module 3). The mismatch of perceptions and values illustrated by this abortive (for the UK) bid, suggests a need for induction into the important role of identifying the participants' interests when examining the content of anybody's negotiable proposals.

A search for a cultural explanation merely because it is another culture is less useful than mastering common negotiating skills. Interests and proposals remain interests and proposals in all cultures. Different cultures do not have different processes of negotiation; the phases and skills of negotiation are universal.

Review Questions

Attempt to answer this practice final examination question as a Review Question without referring to the text and compare your answer with the faculty answer in Appendix 2.

11.1 'Competence in negotiation skills is more important than an awareness of cultural norms'. Discuss.

Module 12

Retrospection

Now that you have completed the eleven modules of this text, it is appropriate that you consider, briefly, the distance that you have covered and where next you might aim to develop as a business negotiator.

The first point I shall make is that the Four Phase/Two Styles approach to negotiation is both an analytical tool-box and a practitioner's guide to activity. You should, therefore, take every opportunity to practise analysis of current negotiations, those in the public domain of major and minor significance, and those of your own.

You can do this with public domain negotiations, which you can read about in the press, by first assessing what the negotiation appears to be about. Your views on this might change as you acquire more information about the people involved, the interests they might have and the issues and positions taken by the parties. Try questioning yourself about each side's interests and how these might influence their particular stances on issues and positions. It is from practice in such analysis – irrespective of the detailed accuracy that you can achieve with the limited data available through the media – that you will acquire greater competence in searching for similar answers when you are dealing with your own negotiations and when you face an apparently entrenched stand-off between you and the other negotiator.

From an appreciation of the role of interests that drive negotiators to favour or to oppose alternative solutions for the issues, we acquire the skill of discovering new options that can break deadlocks over seemingly fixed positions. Unless a negotiator's inhibitions are addressed, or compensated in some way, it is unlikely that progress can be made, because the inhibition represents an interest of theirs (perhaps hidden, perhaps in the open) which is uncovered and vulnerable to your Red play. Just as the other negotiator's Red play, or his potential for Red play, inhibits you from the risk of trust, so the risk of your Red play has the same effect for him.

In-depth analysis of public disputes – a takeover bid, an international treaty, a major strike, a public boardroom row, a community in uproar at a threat to their status quo from development or environmental risk, and so on – is sometimes available in the 'quality' press or the weekly journals. These often reveal the background interests of the parties, or the personnel, involved and can usefully provide you with a lot of material for your own analysis.

Public statements by the personnel leading the dispute sometimes enable you to identify the phase in the negotiation they have reached, and the style they have adopted. While the statement 'no comment' is frustrating for analysts, it is probably the most efficacious for the negotiators concerned. Public abuse, or the declaration of commitment to a fixed solution, often gets in the way of progress, or at least early progress, in the negotiation. If such public utterances are made by one or both sides,

it could be evidence of deadlock or an attempt to intimidate the other negotiator with the strength of feeling on the issues, or merely of a need of the negotiator to send a rallying message to his supporters and to prevent himself being outflanked by militant critics of his leadership.

Yes, this can be confusing. The signals are not always clear. >From the outside looking in through a managed fog of public relations consultants and spin doctors, the real dynamics of the negotiation sadly can be misread. In your own negotiations you must be careful not to jump to hasty conclusions when the trade union leader you are dealing with says one thing to you at the table in one tone (Blue) and another thing in an entirely different tone (Red) away from the table to his members. It is an observable phenomenon that often the most confrontational of people on certain issues are usually the only ones that can make progress with people on the other side of the divide. Consider the arch anti-Communist President of the USA, Richard Nixon, and the way he was able to open up US-Chinese relations that had been frozen for decades, or consider how the British Prime Minister, Margaret Thatcher, no slouch on combating Marxism, settled the Rhodesia/Zimbabwe war and brought to power the Marxist Dr Mugabe, and settled the return of Hong Kong to the Communist government of China. One explanation of this phenomenon is the need, when the interests of the parties are so far apart, for the negotiators to have the confidence of their respective constituencies, and therefore only those who identify most closely with their constituency and who can dominate the opposition have sufficient authority to conduct a negotiation and make the necessary movement to achieve a solution. What the negotiator says away from his constituency is often part of the process by which he keeps his authority over it.

Public access to the details of negotiations is sorely limited in the commercial sphere. Business tends to keep its business to itself – rivals might pounce on confidential information – and only the most bitter of disputes reach the public domain. Sometimes one side in a commercial dispute breaks protocol and issues a statement to the press, only to be gently reined in from the other side by a comment to the effect that 'these matters are best dealt with in private negotiations and not through public comment'. Most public comment on negotiations, therefore, is likely to be confined to industrial relations, public utilities and government activities.

Nevertheless, a rich seam of comment by negotiators in their public statements is available almost daily for you to analyse in terms of the Four Phase/Two Styles approach. You should be sensitive, for instance, to the signals sent by negotiators through the media to each other. 'Our members require a substantial increase in pay' is guaranteed to be more flexible than 'Our members require a 20 per cent increase'. Look for signals in the use of qualified language (remember the signal contained in the speech on the French agents by the New Zealand Prime Minister?) and be sure to understand that a dispute over words can be just as significant as a dispute over numbers.

Listen to the signals (dissembling is probably a more accurate word for it) sent by politicians who deny that they will do something – usually of an unpopular nature – by prefacing their 'categorical' denials with statements like: 'We have no *plans* to raise taxation'. The signal trap lies in the word 'plans', which of course they can say

with almost total sincerity because while they have no plans to do something, things can change and 'force' them to do what they had not planned to do (and up go your taxes!).

Public utility employees demanding 'comparability' and the government refusing it is not a question of the union signalling flexibility and the management responding with intransigence. Comparability as a policy – however defined – could have loaded implications for other sections of the public service. Nobody seeks comparability to have their incomes reduced. The device is used to raise public utility wages, and therefore public expenditure, which might conflict with general government aims of controlling both. Without commenting on the merits of such claims, the negotiator who analyses what is going on is unlikely to be misled.

You can also pick up important messages from the proposals that are made public. These point to tentative solutions. To the extent that they are vague – in condition and content – you can assess just where the negotiation has reached or where it is heading. Some disputes end with a proposal rather than a bargain. This is because one side has decided to cut its losses and accept what is essentially no exchange of specific trades. For example, a government might agree to set up an official enquiry into, say, comparability or safety in the industry, without, if it can avoid it, being committed to agree with or to implement its findings, in exchange for which the union accepts a lower wage rise than it had cited as its goal. Sometimes of course, it is the reverse. A union will promise to co-operate (a vague term in this context) with an enquiry into productivity improvements in exchange for the management conceding a real increase in wages.

Something vague exchanged for something specific is a proposal not a bargain but if it is the only way to resolve a dispute then it is efficacious to agree on such terms. Where issues of 'face' are involved – and do not underestimate the number of occasions where this is the case – it is useful to have a 'form of words' that satisfies the 'face' of one or both sides, and the parties in these cases are very conscious that this is exactly what they are doing and the wiser among them present the settlement without crowing over the fact that they have merely agreed to an empty form of words.

Gesture negotiations parallel gesture politics – we may agree to a minor concession (which can be written up as a 'victory' for our conservatism in leaving things very much as they are) and they establish the principle (which they can write up as a 'victory' for their radicalism). This method of solving a dispute is known as the 'salami' tactic – a slice at a time – and its exponents hope in future negotiations to widen the application of the principle, while its opponents hope to contain it.

Finding forms of words to settle disputes, bridge gaps, smooth ruffled feathers, calm down excited players and generally assist the progress of the negotiation is an art form in itself. By studying what other negotiators are doing in this respect, you can develop some skills that can be applied in your negotiations. Much of the language of contracts is reducible to a form of words. Consider such gems as 'use their best endeavours', 'subject to the approval of the supplier whose permission will not be unreasonably withheld', or 'will normally meet bi-monthly'. Where interests are specifically featured in an agreement, the inhibitions supporting them

can be accommodated with a form of words, such as in a joint venture agreement: 'the intellectual property rights of each contributor are unreservedly recognised and are in no way jeopardised by this agreement'. Look for the way negotiators put together such wording in their communiqués – the European Union is a rich source of examples of fudging differences with forms of words and shows how important it is to have this facility in a negotiation.

Bargains are the normal closing step in negotiation and they indicate the different valuations the parties place on the contending issues. What specifically has one side exchanged for an agreement? A bargain as a specific trade is the culmination of the interactive process – implementation, of course, follows, or perhaps does not as the case may be. Normally, the public presentation of a bargain leaves out all the small print and you could get an entirely wrong idea about the contents of the bargain by merely examining the major headings revealed in the press, but it is still worthwhile practising your analysis even with scanty materials.

Do not forget the intangibles in a bargain. Securing an agreement itself can be a major intangible goal of a negotiation, particularly a bitterly contested one. The fact that the parties are negotiating at all is sometimes of considerable significance. Two rival corporations engaged in 'talks about talks', or actually discussing details of a merger or joint venture can have strategic significance in an industry, hence they go to great lengths to keep it quiet, unless it suits them for other reasons to make it known. A firm threatened by takeover might publicly enter negotiations with another firm to ward off the attentions of the bidder. The fact of negotiations can have enormous significance, which is why some potential negotiations are thwarted by at least one of the parties, sometimes both, to prevent a negotiated solution, which implies compromise, gaining momentum. Examples of this situation abound; as the pressure for negotiations increases, one or both sides, or militant extremists who oppose all compromise, commit an act of violence, or a provocation, or even an atrocity, to break the momentum towards talks of any kind.

Analysis reveals what is, or might be, behind the events of a particular negotiation – it can also lead to a form of indecisive paralysis – and I urge you to practise analysis as a direct means of assisting your development as a negotiator. To rely on instinct, or intuition, or 'rules of thumb', or even luck, is by no means an admission of defeat or incompetence – after all, that is what the overwhelming majority of negotiators are doing every day. Even if we trebled, quadrupled or sextupled the number of negotiators who undertake some form of training, we would still only scratch the surface of the total number of people engaged in negotiation. But those that do undertake some form of training do have a singular advantage over those that don't: they understand what is going on and can choose to manage what they are doing rather than merely react to what the other negotiator does, or what fancy dictates.

As a business manager, you influence what a lot of people around you do in their negotiations. Managers inevitably act as arbitrators between their subordinates and sometimes even their colleagues: they facilitate new thinking in a deadlocked situation when they are asked for, or are driven by events to offer, their advice and they intervene at many levels in decision processes, such as when they make a

contribution to a report from a negotiation and take a stance on what has been proposed so far, or when they help decide what position the organisation, or their part of it, should take on this or that issue and when they remind people of what the group interest is on the contentious agendas their representative negotiators are to face. Nobody who participates in regular board meetings sits for long without commenting on negotiable items and intervening with their views, advice, strictures, values and outlook on policies that others will have to implement, often through negotiation with third parties.

In short, your role as a manager is going to force you to confront negotiable issues all the time and whether you consciously think of it or not, you will be taking stances, or recommending forms of action, that will be the better for an ability to analyse your interests and relate them to the issues on the table.

The Four Phase/Two Styles approach is based on what actually goes on in the negotiating process. It provides you with a means of relating what others describe, or you observe, to sensible, or at least informed, predictions of what is likely to happen in the circumstances as you understand them or as they have been described to you, and from that to offer prescriptive advice on what the negotiators should do next.

I have tried to eschew any form of moral overtones in what has been presented in the modules and where I might have strayed from that principle on occasion, I hope it has always been in the direction of subscribing to a view that negotiations that are based on mutual respect and trust are more likely to provide implementable agreements that mutually benefit the parties without exploitation or coercion. Can I therefore leave you with the statement that guides myself and my colleagues in all our work as consultant negotiators? Its literal translation has, I hope, been made obvious from what you have worked through in this text and come to know about our approach to business:

Ex Bona Fide Negotiari.

Appendix I

Practice Final Examinations

The rationale for providing two examinations is that students who have worked through the course, have taken the first practice examination and, on the basis of their performance in that examination, are not satisfied that they have attained mastery of the material, will be able to study the course again and have a second opportunity to test themselves. Where the first examination is satisfactory, the second may be used for additional practice.

Practice Final Examination 1

The duration of the examination is 3 hours. The marks value of each section is shown below. You may allocate your time as you see fit. The pass mark is 50%.

There is no choice in the selection of questions to be answered.

The examination is in two parts:

Part 1 Case Study
Part 2 Essay Questions

Part 1: Case Study

Total marks available in Part 1	5 × 8 = 40

Marks for individual parts of the case study are shown.

Part 2: Essay Questions

3 questions each worth 20 marks. Total marks available in Part 2	3 × 20 = 60
Total marks available	= **100**

Pass mark = 50% of 100 = 50

Part 1: Case Study

'Unauthorised Variations'

Holt Plc, an offshore contractor specialising in weatherproofing of production platforms in the North Sea, won a contract to clean and repaint one of Conto Oil's six production platforms against some stiff price competition. Conto Oil specified that time was of the essence and that in no circumstances was the weather-proofing to interfere with production, or production-related maintenance work, and that the job had to be completed in 35 days.

Holt's bid was £1 250 000 and included all labour and material costs but excluded transport to and from the rig and offshore board and accommodation of the crews. The work, however, was not completed on time – it took 47 days – though it passed Conto's quality inspections and did not disturb production.

Holt submitted its invoice for the contract as follows:

Original bid as agreed		£1 250 000
Variations and delays		£123 000
Additional materials		£15 000
	TOTAL	£1 388 000

Conto returned this, unpaid, with a letter stating its refusal to pay for extras that were not authorised by the Purchasing Controller, and requested that they be re-invoiced for the original bid price.

Holt's Managing Director felt unable to accept Conto's response and decided to call in a consultant to prepare a reply and a negotiating case. He briefed the consultant with the following information.

The delays on the Conto platform were occasioned entirely by Conto and not by any slackness on Holt's part. For example, the platform's flaring boom had to be shut down for several days, while Conto's safety and maintenance people surveyed its structure and undertook some repairs. This prevented Holt from following its prepared work-pattern and caused some considerable rescheduling to occupy its crews in other work elsewhere on the platform. In addition, another contractor caused a major spillage of solvents on the production deck of the platform, affecting two lower decks that had been cleaned and primed by Holt, necessitating rework and replacement of stored materials that were contaminated both in the original spillage and the preventative hosing down of the entire area by Conto's safety teams, plus those materials that were required to redo the partially completed work.

Other minor delays were caused by production and production-related maintenance work by other contractors, though these are normal in this industry and an allowance is usually made in the agreed timetable for completing the contract. However, in this case all delays had knock-on effects. Most of the variations in the work schedules were agreed verbally on the spot between

Holt's and Conto's production staff. Sometimes this entailed agreeing to interrupt a particular task, which meant dismantling and setting up the painters' rigging elsewhere on the platform. The working culture on an oil platform is one of 'get the job done and argue later', and while Conto had established variation procedures, pressure is always on a contractor to get on with the work and sort out paperwork at the end of a job. Conto's production people certainly did not adhere strictly to procedures, and with shift changes – and sometimes entire personnel changes as men went ashore on leave – variation procedures sometimes were let slip. Rearranging Holt's crews, including rescheduling onshore and offshore leave and personnel movements, to make up for lost time involved Holt in additional direct expense in personnel costs (including overtime and additional people on extra shifts), and in indirect expense in, mainly, managerial overheads to supervise on-site and ashore the rescheduling and the work rate of the offshore extra shifts.

Holt's internal breakdown on the additional costs were:

Extra materials		£15 000
Additional crew costs due to delays		£119 500
Premium for managerial time due to rescheduling		£13 500
	TOTAL	£148 000

Holt was not willing to compromise too far on the invoice, in view of the high proportion of actual costs to Holt involved in completing the contract.

Assume that you have been engaged by Holt as a consultant and they have presented you with this problem as your first assignment. Using the above information, answer the questions that follow with short essay-type answers. Each question is worth 8 marks.

1 What is the first task you would want to undertake before making any recommendations on possible courses of action?

2 What would you estimate the interests of Holt Plc to be in this case?

3 What issues can you identify in this case from Holt's point of view?

4 What would you perceive Conto Oil's interests to be from what you know of the problem?

5 What does Holt need to know from the debate phase before it can make a proposal for solving the problem?

Part 2: Essay Questions

Each question is worth 20 marks.

1 What are the limitations on personality typing of negotiators?

2 Why is a Red negotiating style so common?

3 Which are the common and which the distinguishing characteristics of proposals and bargains?

Practice Final Examination 2

The duration of the examination is 3 hours. The marks value of each section is shown below. You may allocate your time as you see fit. The pass mark is 50%.

There is no choice in the selection of questions to be answered.

The examination is in two parts:

Part 1 Case Study
Part 2 Essay Questions

Part 1: Case Study

Total marks available in Part 1	5 × 8 = 40
Marks for individual parts of the case study are shown.	

Part 2: Essay Questions

3 questions each worth 20 marks. Total marks available in Part 2	3 × 20 = 60
Total marks available	= **100**
Pass mark = 50% of 100 = 50	

Part 1: Case Study

'Hope Value'

A Developer has identified a potential site for a 'Bigger Burger' roadside restaurant and a 32-bedroom, lodge type of hotel on a main road close to the national motorway system. There are a number of problems holding up a decision to sell the site.

First, the current owner has been reluctant to sell quickly because he would have to dispose of his caravan business, presently occupying part of the site; second, the council planning department has only approved the developer's application to build the restaurant and is still considering the application for the lodge; and third, the petrol station on the site is leased by an oil company, which has two years left on its lease but has indicated that it wants to relinquish its lease as the caravan business does not attract enough business for the petrol station (though it might if there were a lodge and burger restaurant on site).

The current and proposed layout of the site is shown in Figure A2.1.

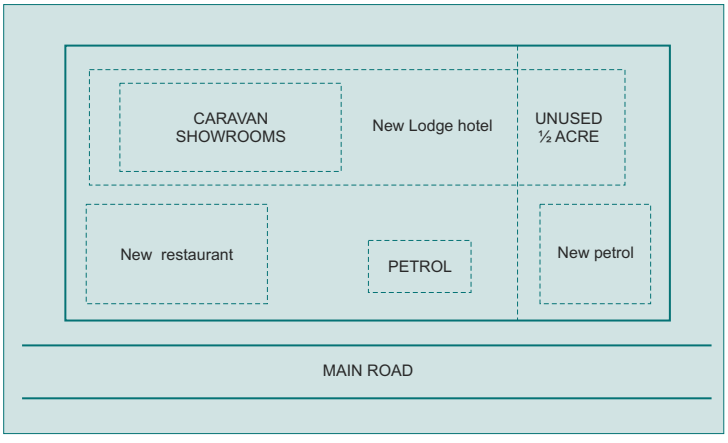


Figure A2.1

The developer has offered £350 000 for the site and wants entry in six months to commence demolition of the existing buildings and erection of the restaurant and lodge as soon as possible thereafter. It is possible that the petrol station could be re-sited to the vacant ground on the right of the site, but this would require negotiation with the oil company on the terms for extending their lease and on their willingness to pay for upgrading the station in harmony with the new buildings. It has so far cost the developer £20 000 in professional services (surveyors, architects, acquisition staff and administration costs) to process the application through the council planning department. This will only be recovered if the purchase is concluded.

Because planning permission for the lodge has not yet been given, and may not be decided for another 8 months, the developer has offered to buy the site conditionally, i.e. to pay in three tranches of £100 000 on completion of the

contracts in two weeks' time, £100 000 on entry for his construction teams in six months and £150 000 on receipt of planning permission for the lodge hotel.

The owner of the site is interested in selling because he has decided to quit business (for personal and health reasons) and retire to the Channel Islands. To carry this decision out he needs to realize all of his UK assets and he must transfer them to Jersey to qualify for a resident's permit, which he must have before he can offer to buy a suitable house, costing upwards of £1.7 million.

To realize the full value of the assets and goodwill of his caravan business as a going concern, he needs to sell it to somebody who will relocate it and this could take him up to three months. He hopes to sell it for over £500 000. His other business interests will take much longer to sell and are worth over £1.5 million. The site, which the developer wishes to acquire, is his most realizable near liquid asset and, if he is to implement his decision to retire, he must sell so that he can deposit a £250 000 Residential Bond in Jersey. Yesterday the Jersey authorities notified him that he has twenty-one days to deposit the Bond, which he must show is his own and not borrowed money, and to comply in time he must now realize the value of the site quickly or risk missing the increasingly rare opportunity of being invited to become a Jersey resident.

Assume that you have been engaged by the owner as a consultant and he has presented you with the problem as your assignment.

Using the above information answer the questions that follow with short essay type answers. Each question is worth 8 marks.

1 What would you estimate are the main interests of the owner in his situation?

2 What are the likely issues for negotiation from each party's point of view?

3 What would you estimate the other party's priorities to be and what would you conclude from this?

4 When would you develop a first proposal to present to the developer that takes account of your client's interests and inhibitions?

5 What in your view are likely to be the main areas of contention between the developer and the owner?

Part 2: Essay Questions

Each question is worth 20 marks.

1 Which debate behaviours are likely to be effective and which are likely to hinder settlement or deadlock the negotiation?

2 Why does a tactical approach to negotiation tend to produce a 'Red Style?'

3 How does the concept of the negotiator's surplus assist analysis of the negotiator's dilemma?

Examination Answers

Practice Final Examination 1

Part 1: Case Study

1 *What is the first task you would want to undertake before making any recommendations on possible courses of action?*

	Marks
Emotional approach to conflicting beliefs leads to strife	2
Data is more persuasive than unsubstantiated opinions	2
Data must be collected and analysed	2
Evidence that supports credibility of data useful	2
TOTAL	8

This type of dispute is often charged with the potential of emotional conflict. Conto Oil appears to believe that Holt is trying to extract additional income at its expense; Holt believes that it is entitled to the additional charges and that Conto Oil is trying to evade its responsibilities. If these beliefs persist there is not likely to be a basis for a negotiated solution and it might come down to either brute strength and ignorance or to litigation.

Holt needs to know the exact details of the events that caused it to suffer the extra expenditures outlined in its invoice. It is not sufficient for Holt to attack Conto Oil on a broad front with charges of delays and incidental anecdotes of what happened on some occasions with Conto's production people. Holt needs data on each and every delay and the details of the cost consequences, and the more specific the data the better. If this data has been logged by Holt's on-site management it can build its case and substantiate the bulk of its claim for variation payments; if it cannot do this, or if the data is patchy, it may have to accept a less favourable compromise. In the absence of data we are down to opinion and impression, neither of which is as convincing in a negotiation as data.

A detailed examination of the documentation, including the work schedules, all the associated paperwork (instructions to staff, reassignment memos, booked and cancelled trips, overtime requests, payslips and so on), stores requisitions, project diaries and such like should be undertaken by those personnel likely to be involved in the negotiations. Some preliminary analysis is also useful, including the drafting of line or bar charts and diagrams representing the raw data. Wherever possible, the names of Conto Oil staff who authorised individual variations should be collected, and, of course, any Conto Oil official paperwork must be brought into the picture. In addition, examples of Conto Oil breaching their own variation procedures (especially involving senior Conto Oil personnel) could be useful in presenting Holt's case.

In summary, Holt requires data as this case is likely to turn on the credibility of Holt's claims for variation payments.

2 *What would you estimate the interests of Holt Plc to be in this case?*

	Marks
Define interest as a motivator	2
Identify interests as:	
• economic survival	1
• good relations with customers	1
• customisation of work opportunities in North Sea	1
• proper authorisation of variations to avoid disputes	1
• protection of commercial reputation	1
• timely resolution of dispute	1
TOTAL	8

Holt has more than one interest in this case. An interest is a motivator that leads the negotiator to prefer one solution over another. For instance, Holt wishes to survive economically as a going concern engaged in profitable business. To this end, Holt requires it to be paid for work it has undertaken, which payment must include compensation for its direct and indirect costs plus some contribution to its annual profit. It also has an interest in maintaining good relations with its customers, and Conto Oil in particular. A failure to resolve this dispute amicably could lead to its exclusion from future work with Conto on its other five North Sea rigs.

The dispute itself has shown that Holt has an interest in ensuring that all variations in work, however occasioned, must be properly authorised and documented, for while it might achieve something satisfactorily in this dispute without formal authority for variations, it could also do so at some expense to its reputation (word soon gets round about these things), or to its relationship with Conto. This interest in proper procedures is joined to its broader interest in protecting its commercial reputation. Any notion that Holt is 'padding its accounts' for undeserved gain could damage it severely in a highly competitive market. How it might meet this interest is open to discussion but it might be possible to negotiate some agreed and workable procedure for the future that could benefit both Conto and Holt.

Holt presumably has an interest in resolving the invoice at the earliest moment. It is fair to assume that Holt has already paid out the personnel element of its costs, which stand at £119 500 or 87 per cent of the invoice, and the material costs at £15 000 or 11 per cent of the invoice. This combined proportion of 98 per cent of the invoice represents Holt's direct costs of working for Conto Oil and currently are a drain on its cash flow. A timely settlement would ease that burden and is plainly in the interests of Holt.

3 *What issues and positions can you identify in this case from Holt's point of view?*

	Marks
Define issues as agenda of negotiation	1
Define position as quantitative measure of issue	1

Issues include:	
• future contracts	1
• authorisation of variations	1
• payment of invoice	1
Positions include:	
• exact terms of future contracts	1
• detailed procedures for authorising variations	1
• how much of invoice is to be paid	1
TOTAL	8

Issues are the agenda of decisions that address the negotiator's interests. To survive economically, the issue of the payment of the invoice has to be settled. How much of the invoice is paid is a position. Presumably, Holt would enter with a position that demands payment in full; its exit point would be determined by circumstances, including how it prioritised the issues to serve its perception of its interests.

Future relationships with Conto Oil in particular, and other major oil companies in general, might create an issue out of future contracts and the terms under which they are accepted. The individual terms constitute an agenda of issues and we would expect that terms relating to authorisation of variations would feature in the negotiations. Clearly, whatever the procedures for authorising variations, the current work practices on the platform do not conform to them. This could be, as Holt would argue, because Conto production staff evade procedures that jeopardise production or, as Conto would claim, because Holt personnel evade the procedures to pad their invoices. A practical and fully applied procedure for authorising variations is required that both meets production requirements and protects the contractor from undertaking work for which it is not compensated. The negotiation might centre on this issue, or it could break down in a welter of emotional accusations of cheating, with Holt in a pompous defence of its integrity and Conto hiding behind bureaucratic rules.

Another issue would be the integrity of the data that support Holt's claims and Conto's challenges of them. Conto need to be convinced of Holt's integrity and this requires detailed information of each and every expense; Holt require assurance that in disclosing the data it can convince Conto to make payment. This creates a problem for Conto because, in accepting the principle of paying for unauthorised variations, it both signals to higher management a failing of its platform managers to operate established procedures and sets precedents for other contractors that Conto is a 'soft touch' for variation payments. This issue could be the most significant to come out of the negotiation. Naturally, Conto and its contractors might adopt different positions on the details, with the contractor anxious not to get entangled in too tight a system that builds in avoidable delays while a variation is cleared by Conto management, with the contract clock still running towards the scheduled but now impossible completion date. Similarly, Conto must prefer to eliminate uncontrolled variation claims from contractors to avoid spurious claims but would not

want to so restrict decision-making by local management that it made the platforms inefficient.

The positions that Holt would take would depend entirely on how it prioritised the issues. A position is subordinate to a negotiator's interests for there is no point taking a firm position on an issue that jeopardised an interest. For example, to demand full payment, irrespective of what the data reveal, might ensure payment but could cause the contractor to be eliminated from future bids. Likewise, to refuse payment of genuine variation claims under the guise of a failure to conform strictly to procedure might cause contractors to refuse any variation even when it was manifestly in Conto's interest to agree to it, or to insist on full procedures being carried out even when by doing so Conto's production interests were jeopardised. Managerial time spent in 'cat and mouse' games is always wasted.

4 *What would you perceive Conto Oil's interests to be from what you know of the problem?*

Conto's interests include	**Marks**
• establishing current integrity of variation procedures	2
• financial consequences of current and future procedures	2
• professional competence of Conto's purchasing managers	2
• continuous and safe production	2
TOTAL	8

Conto has an interest in establishing just how leaky is its current variation procedure as applied by local platform managers (though whether its negotiators spot this is another matter) and this should lead it to welcome the side effect of the Holt negotiation in that it provides a detailed case history of the failure of its procedures in a specific instance. If Conto see benefit in pursuing the truth and can refrain from only wanting to punish a contractor for technical breaches of procedures, it could find itself with the basis of a workable and leak-proof authorisation procedure for variations.

There are financial interests of Conto to be considered. Contract procedures require careful budgeting of maintenance work, which is one of the reasons for the use of a tendering system. Having accepted Holt's bid against stiff competition, Conto's contract managers would not want to see a rise in the cost of the work in case this reflected on their purchasing abilities. The managers would feel threatened if they allowed contractors to up their prices against their bids. Indeed, many companies judge the performance of their purchasing managers entirely on their ability to secure lower prices than those budgeted. Containing costs is an important element of a manager's job and the Holt invoice would fall foul of that interest. Suppose, for instance, that the Holt cost overrun coincided with a promotion contest in purchasing? Would not this introduce a new, though personal, interest into the negotiations?

Financial interests are constrained, however, by other interests, such as those of continuous and safe production, which must take precedence over the containment of a contractor's costs for a £1 250 000 job. Failing to secure the safe operation of

the flaring boom, for example, could cost many times the £148 000 involved in the Holt cost overrun. This precludes the platform management from adhering to impractical procedures or permitting contractors to insist on the strict terms of their work schedules.

The negotiated settlement would have to take account of these sometimes conflicting interests.

5 *What does Holt need to know from the debate phase before it can make a proposal for solving the problem?*

Holt needs to know:	**Marks**
• the basis for Conto rejecting the invoice to identify Conto's interests	1
• is rejection merely bureaucratic legalism?	1
• what does Conto want and why?	1
• do they accept the principle, if not the current invoice amount, that variations should be paid for?	1
• is it a question of substantiating the claim or a fact of outright rejection irrespective of the claim's merits	1
• is it possible to agree that variations should be paid for if they are genuine?	1
• can Conto's concerns about escalating costs be met by agreeing a workable variation procedure for the future?	1
• if Conto recognises that its current procedures were defective, can this be used to justify payment for Holt's current invoice?	1
TOTAL	8

Holt needs to know a lot more about the basis of Conto's rejection of the invoice. Is Conto hiding behind a bureaucratic procedure for authorising variations and taking a purely legalistic stance, or is it rejecting the invoice until it has been convinced by data that the variations, though not strictly authorised, were in fact occasioned by the production requirements of its platform management? In short, Holt negotiators would want to know what interests were motivating Conto's contract staff.

The answers would emerge from questioning Conto's negotiators and listening to their statements and their reactions to Holt's statements and documentation. There would be absolutely no point in formulating a proposal to reduce the invoice before discovering what Conto wanted. Their interests might preclude them wanting to have the invoice reduced, if this would expose the local management to criticism from head office that they are not managing their affairs effectively. What they might want instead is assurance (and detailed evidence) that Holt's charges were soundly based. To jump the gun could be disastrous for Holt and its future relationship with Conto.

Holt's negotiators would want to use the debate phase to secure agreement with Conto that genuine variations in contracted work are legitimate claims for payment.

The question comes down to whether a formally authorised variation is the sole criterion for payment independent of whether the actual variation was genuine or not. If the Conto principle was that it cannot allow unauthorised variations to be paid because this would expose it to abuse by contractors, Holt could shift the focus to whether the current procedures for authorising variations met Conto's production needs and gave contractors an incentive to co-operate with the platform management. It could be that the details of the case would help to convince Conto that its procedures required amendment to secure both these objectives. From here Holt could make proposals on the authorisation procedures, and on the basis that Conto recognised that changes were necessary, Holt could justly claim payments for work done which was not authorised under what is agreed to have been an inadequate procedure.

Part 2: Essay Questions

1 *What are the limitations on personality typing of negotiators?*

	Marks
Rubin and Brown on interpersonal orientation	1
Four personality types	1
Collaborators	2
Competitors	2
Accommodators	2
Avoiders	2
[*If the answer relies only on Gottschalk's personality types and does not mention Rubin and Brown's orientation model, maximum marks for this section is 8*]	
All personality types negotiate with all other personality types	2
Sixteen combinations of types possible	1
Complexity of identifying personality types	2
Behavioural training can override personality types	2
Practical difficulties in identifying personality types	2
Evidence that personality may influence only opening phases of negotiation	1
TOTAL	20

According to Rubin and Brown (1975) two variables determine the personality of negotiators: their interpersonal and their motivational orientations. By interpersonal orientation is meant their sociability towards other people – do they react or not react to other people's behaviour? By their motivational orientation is meant is whether they tend to be competitive or co-operative.

Using these orientations as dimensions, we get four basic personality types: collaborators; competitors; accommodators; and avoiders. Negotiators are alleged to be one of the four types. They are characterised as follows:

- Collaborators are relationship oriented and seek pragmatic solutions to problems. This makes them good team players who involve everybody in the decision.
- Competitors rely on power rather than relationships and are generally akin to red players. They use ploys and bluffs and generally seek personal advantage when negotiating.
- Accommodators are relationship oriented and unlike collaborators, they seek to placate and smooth over difficulties whenever conflict threatens (collaborators would talk it through without making unnecessary concessions).
- Avoiders will rely on precedents, rules, procedures to avoid changes to the status quo and they do not like the tensions of negotiation.

Most people probably display a mixture of the four types at different times, though they may have predominance in one type for most of the time. Which type is the likely to be the 'best' negotiator is a pointless question, as all personality types negotiate, often with other personality types.

Other limitations of personality typing are both conceptual and behavioural. Negotiations are in pairs. Thus, for four types there are sixteen possible combinations (with the same type and with each of the three other types). This is compounded if there are teams of negotiators in each party, each drawn from the four personality types. Such complexity makes it difficult to identify the appropriate personality influence of the types on the outcome.

Also, certain negotiation behaviours appear to work well when used and others usually work badly. Behaviours that work can be enhanced through training and those that do not, can be reduced if not eliminated. If behaviour training can override personality traits, of what value is there identifying personality as an influence on the outcome?

The main practical problem is in a negotiator identifying somebody else's personality type (as a prelude to overcoming it) in the stressful environment of a negotiation. Even if achieved (in scientific exercises, it requires nine extensive tests lasting several hours), the negotiator has then to match it to his or her own personality and behave accordingly. Again this means overriding his or her own personality, which if achievable, why concern oneself with personality?

Evidence suggests that if personality has an influence, it is only in the opening sessions of a negotiation and quickly is displaced by reactions to each other's behaviours. From this limitation, it is better to study their negotiating behaviours, whatever their personality traits, and apply the appropriate (purple?) behaviours that generally work.

2 *Why is a Red style so common in negotiation?*

	Marks
• Identifies two styles: Red and Blue	1
• Defines Red style	1
• Defines Blue style	1
• Describes extent of both styles	1
• Describes implication of Prisoner's Dilemma game	4
• Explains why people act in Red style to protect themselves or to cheat	4
• Explains negotiator's dilemma in terms of dependence on other negotiation actions	4
• Shows how negotiation deals with Red styles by measured risk-taking on Blue style	4
TOTAL	20

There are two main styles of negotiation, Red and Blue. These can be thought of as the opposite ends of a continuum of styles running from extreme Red – the bombastic, aggressive approach to negotiation – through to its opposite, extreme Blue – the submissive, cringing approach. In between the extremes, there are various shades of Red and Blue, with a Purple hue where the two colours overlap in the middle. Colours are used to designate different approaches in order to avoid any moral overtones implied by words like competitive or collaborative: Red is a sign of danger, indicating a competitive approach; Blue, a more peaceful, cooler style, indicating a co-operative approach.

While for some people their negotiating style reflects their perceptions of business or their personalities, for most people their approach is mainly determined by the situation they find themselves in and by how they perceive themselves vulnerable to potential actions by the other negotiator.

The Red stylist perceives business as a highly competitive contest between himself and everybody else – the prizes go to the toughest not the meekest – and from this perception he views every negotiation, or indeed, every decision, as one in which he must push for the largest slice of whatever is going, and be seen to get the largest slice too. This is summed up in the statement that 'more means less': more for me means less for you. He does not seek to share, he seeks to win, and if this is at the expense of the other negotiator, that is just too bad (losers deserve to lose).

The Blue stylist, in contrast, is uncomfortable with the losses that arise from conflict and seeks to avoid clashes of interest disrupting the possibilities of both sides gaining from co-operation. In its extreme form the Blue stylist (like his extreme Red counterpart, though for different reasons) can be hopelessly inadequate as a negotiator because he will give in rather than fight for his own interests and would rather have peace on somebody else's terms than be too confrontational (his Red counterpart would rather fight than compromise).

The moderate Blue stylist sees the virtues and the benefits of collaboration rather than competition with the people with whom he does business (he is no less

competitive than the Red stylist with his rivals in business, but unlike the Red stylist he does not see himself in competition with his suppliers or his customers). His approach can be summed up as 'more means more': more for me means more for you. Instead of fighting over a single pie, 'let us see if we can create several pies and share them equitably according to our interests'.

Setting aside the minority of Red or Blue stylists who act because of their personalities, we must explain why people are often driven by the situation to behave in a Red manner, even though they might be clear on the benefits of co-operation and would prefer to be Blue.

Prisoner's Dilemma games have demonstrated that people can adopt a Red rather than a Blue style because their perceptions of the situation force them to act Red, irrespective of their general awareness of the benefits of co-operation. Faced with a choice of co-operation or defection, in circumstances where a player is at risk of a defection by the other player, the rational choice is to defect to protect oneself.

People perceive the game as a competitive contest. There is a risk of 'losing' and a hope (temptation?) of 'winning'. The co-operative choice of both sharing the available gains is seldom attractive enough, because it requires that the players have a basis for mutual trust (which Prisoner's Dilemma games either eliminate by prescribing non-communication between the players or do not make explicit as a goal for them in the briefing). The result for most plays of these games is for one, or both, to defect (play or behave in a Red style), which reinforces the doubts of all the players about the efficacy of trustworthiness (playing or behaving in a Blue style) in such situations.

The games highlight the negotiator's dilemma: 'I do not behave in a Red style because I want to, but because I must.' But by behaving in a Red style for whatever reason, be it motivated by fear of vulnerability to Red play by the other negotiator, or by an attempt to win at the other negotiator's expense, this reinforces the perception of vulnerability felt by the other negotiator, who cannot easily distinguish between the other player's motivations, and, naturally, he comes to the worst conclusion: you set out to cheat me!

It is the vulnerability of the negotiator that promotes Red style behaviour. This behaviour does not necessarily have to be of the Red bombastic and aggressive type. Red styles encompass all kinds of behaviours well short of such extreme examples of the style. Any signs of unwillingness to trust the other negotiator can have elements of the Red style, either explicitly or implicitly, in them. For example, the negotiator must assume that other negotiators have entry positions that are different from their exit positions; in short, that they have padded their demands or shaved their offers. The degree to which the negotiator believes the respective entry positions are unrepresentative of the other negotiator's exit positions will influence the tone by which he or she reacts to hearing them. If they believe that they are totally unrepresentative, it is likely that they will use abrasive language in challenging them, which encompasses Red style manners and provokes Red style responses.

Moreover, the negotiator who has presented what is in fact an entry position close to his exit position and who receives a Red response has no way of knowing whether the apparently Red response is caused by the other negotiator's genuine

belief that there is more padding or shaving than there is, or whether such behaviour is part of his normal (Red) tactics with everybody. Is this a mistaken perception or a tactical ploy? To avoid the dilemma of not knowing what the other negotiator is up to, the negotiator can open with a padded or shaved entry position and see what sort of reaction he gets. If it is Red he has negotiating room; if it is Blue he has lost nothing (perhaps he has made a Red gain as well). Thus negotiators tend to open Red because they expect the other negotiator to do so too, or they expect them to react in a Red way to any entry position – so they get their retaliation in first. However, by opening in such a way, the negotiator risks that his padded or shaved entry position, because it is unrealistic, will drive a Blue style negotiator into a Red reaction.

The Prisoner's Dilemma games are one-off, all-or-nothing outcomes. Negotiation seldom requires such a sudden-death decision. Nevertheless, negotiators face the dilemma of trust because they do not have a reliable mechanism for knowing exactly what the other negotiator is up to ('is he exploiting me?' – a Blue concern – or 'is he exploitable by me?' – a Red motivation). The situation leads commonly to some degree of Red style behaviour, and this can escalate into a vicious circle of destructive argument, leading to deadlock, or to a distributive bargaining contest over the division of a single pie, leading to a less than open stance by both negotiators, which reduces the possibilities from a more open Blue style and a mutually beneficial trade-off between different shares of different pies.

3 *Which are the common and which the distinguishing characteristics of proposals and bargains?*

	Marks
• Defines proposal as a tentative suggestion	2
• Can only negotiate proposals	2
• Proposals are subject to debate and invite amendments	2
• Shows difference between signal and a proposal	2
• Identifies two components of proposal as condition and offer	2
• Shows condition as non-specific or specific and offer as always non-specific in a proposal	2
• Identifies assertive format of proposal as If – Then	2
• Defines bargain as a solution	2
• Identifies components of bargain as a condition and offer	2
• Shows difference between proposal and bargain as specific condition and specific offer	2
TOTAL	20

A **proposal** is any form of tentative statement that makes a suggestion about how to proceed during the negotiation, or which indicates what might be a solution to an issue under discussion. The key adjective is **tentative**. Proposals are not explicit solutions and cannot sensibly be treated as such. They crop up all the time, from the proposal on the order of an agenda – 'let's deal with the accident rate first and then

with warehouse thefts' – to an outline of a solution – 'if you pay for safety training we could **consider** accepting random inspections at the warehouse gates'.

Debates, and their components, cannot be negotiated. We can only negotiate proposals, which are remedies or solutions to whatever we are debating. It is not possible to offer an explicit solution to a problem, and to expect it to be accepted without debate or amendment in those circumstances where a negotiation is the appropriate method of reaching a decision (i.e. the parties to the debate require each other's consent if a solution – an agreement – is to be implemented). If one party's solution must be implemented then it is not a negotiation. Therefore, negotiators explore possible solutions – naturally proposing their own preferred solutions when it is appropriate to do so – and also they explore the possibility of a solution that is different from the ones first proposed by the other negotiator, and they consider, and reconsider, how to amend their own preferred solution to make it more acceptable to the other party.

Proposals are tentative because it is never clear what is actually acceptable to the other negotiator, if only because each negotiator attempts to present his or her own solution as the basis for agreement. Starting off with two solutions to the same problem – one from each negotiator – they move towards finding out if there is a common solution.

A **signal** is the most tentative of indicators that a solution is possible which is different from whatever has been suggested or indicated to that point (including the case where what has been indicated is a total opposition to any solution). Signals are the antechamber of the proposal phase of the negotiation. If responded to positively they can lead to a tentative proposal; if rejected, they usually lead back to the debate phase.

Proposals consist of two parts: the **condition** and the **offer** (note that offers without conditions are not proposals, they are give-aways). In the proposal phase, the condition can either be specific or non-specific but the offer is always non-specific.

For example, a proposal could take either of these forms:

> If you were to show some flexibility on weekend coverage, then we could consider some improvement on shift premiums.

or

> If you accept our contingency profit scheme, then we could consider reducing the qualifying payback period of the loan.

In the first example, the condition is non-specific ('show some flexibility') and so is the offer ('we could consider'); in the second example, the condition is specific ('accept our contingency profit scheme') but the offer is non-specific ('we could consider'). Note, however, that both are linked in the assertive format of 'If you – then I' which places the condition first and follows with the offer.

The proposal can be presented in as tentative a form as is suitable for the occasion. A negotiator could use words such as 'Supposing that…'; 'Just for arguments sake…'; and 'What if… ?'. Clearly the more tentative the proposal the more exploratory is the need of the moment, particularly if the negotiator is trying to move the focus of discussion from a difficult and tense mood towards a more flexible stance by both sides.

As the negotiation moves from debate towards solutions, as each negotiator acquires a clearer understanding of the other's interests and flexibilities on issues and positions, the proposal phase is likely to see a firming up in the conditions attached to each proposal, though there should be an element of non-specificity remaining in the offer. By presenting alternative or complementary proposals, or blends of the two, the negotiators are repackaging their solutions to take account of each other's interests and inhibitions.

At some point, one of the negotiators, or both together, will recognise the outlines of a solution that should be acceptable to each side, at least in general terms if not yet in detail. The proposal phase slides into the bargaining phase and the format of the proposal changes.

A **bargain** keeps to the assertive format of 'If you – then I' (or its equivalent words) but shifts from being non-specific to specific. For example, a bargain would take the form of:

> If you pay our legal costs, then we will accept your price of £3.5 million.

The specific condition, 'pay our legal costs', is the price of the specific offer, 'accept your price'. Bargains are always specific in both the condition and the offer. They are final, in the sense that if the other negotiator says 'yes', then there is an agreement; if he says 'no' they go back to debate, perhaps to be followed by an amended alternative bargain. A bargain, if accepted, closes the negotiation. The parties need only to write up the deal and to arrange its implementation. In the case of a proposal, a negotiator who accepts the proposal and says 'yes' has some work left to do, because while the condition might be specific or unspecific, the offer is not yet and the least that requires to be done is for the negotiator to establish what is meant by the unspecific offer. For example, a negotiator would want to know what is meant by 'show some flexibility' (an unspecific condition) and what is meant by 'some improvement' (an unspecific offer) in the following proposal:

> If you were to show some flexibility on weekend coverage, then we could consider some improvement on shift premiums.

He or she would want to know what is meant by 'consider reducing' (an unspecific offer) in the following proposal:

> If you accept our contingency profit scheme, then we could consider reducing the qualifying payback period of the loan.

Saying 'no' to a proposal leads both back to debate, as does saying 'yes' (asking questions to what is meant by a condition or an offer returns the negotiation to the debate phase).

In the bargain phase, the terms of the bargain are specific. Saying 'no' must return the negotiators to the debate phase, making a statement about why the bargain is unacceptable returns them to the debate phase, and proposing an alternative bargain keeps them in or returns them to the bargain phase. Saying 'yes' closes the negotiation, at least on that issue.

A proposal is a tentative solution which requires more work; a bargain is a specific solution which can decide the outcome. They both, however, must be presented assertively (If – then).

Practice Final Examination 2

Part 1: Case Study

1 *What would you estimate are the main interests of the owner in his situation?*

Our interests are what motivate us to want something. The owner's main inter is to qualify for residence in Jersey for his retirement.

To qualify as a resident he must deposit £250 000 of his own (not borrowed money as a Residential Bond within 21 days. If he misses the deadline he might face a long and uncertain wait for another opportunity to acquire permission to live Jersey.

He also wishes to retire from his business for personal and health reasons, which is sufficient to motivate him to sell his business assets without the 21-day deadline from Jersey.

His priorities are to raise money from the sale of his assets to qualify for his move to Jersey, and to be given up to three months to sell his caravan business on t site as a 'going concern' so that he can obtain the best price for his business to pay upwards of £1.7 million to purchase a Jersey residence.

His interests are:

1. To retire to Jersey.
2. To deposit £250 000 as a Resident's Bond (out of his own resources) within days.
3. To secure high prices for his business assets.

2 *What are the likely issues for negotiation from each party's point of view?*

An issue is any decision which must be agreed by both parties. The negotiable issues constitute the agenda.

The owner and developer will negotiate the following issues:

1. The sale price of the site.
2. The size and timing of the payments making up the sale price.
3. The timing of the developer's access to the site, in part or in whole.
4. The responsibility for negotiating with the oil company the movement of the existing petrol station to vacant ground to the right of the site.

The owner wants a quick deal so that he can comply with Jersey's rules for obtaining residential status. He has 21 days to come up with at least £250 000. He also wants to delay the developer's entry to the whole site so that he can sell his caravan business as a going concern.

The developer is in less of a hurry – though he wants to secure the purchase of the site – because he does not want to expose himself financially in case he fails to get planning permission for the lodge hotel. He also needs to get the oil company to move the petrol station to fit in with his plans for the site.

Both parties need to bear in mind the interests and inhibitions of the other side if they are to come to an agreement.

3 *What would you estimate the other party's priorities to be and what would you conclude from this?*

Put together, the whole site is worth more than the sum of its parts. Individually, each project (restaurant, hotel and petrol station) is worth much less to the developer. Users of each of the projects would have a tendency to purchase goods and services from the other two.

If the site-owner could help to obtain the planning permission for the lodge hotel from the council and agreement by the oil company to move, he would be able to increase the price he could obtain from the developer. If, however, he revealed his intentions about retirement and the deadline he was under, he would reduce the price he would obtain from the developer.

The developer is exposed financially if he pays out all of the sale price before obtaining planning permission for the lodge. Yet it is in his own financial interests to clear at least part of the site and build the restaurant as soon as possible, in order to generate some income at the earliest opportunity.

The developer's first priority must be to agree with the owner a start date for building the restaurant on part of the site, but to do this he would have to agree the total price and payment terms of the whole site with the owner.

4 When would you develop a first proposal to present to the developer that takes account of your client's interests and inhibitions?

Proposals are best made when both parties' interests and inhibitions have been revealed following a constructive debate.

Prior to entering negotiations, both parties should have identified their interests, the issues needing to be addressed, their entry and exit positions on the issues, and how each of them values the tradables.

Their debate might reveal some surprises about how the other negotiator values the tradables, and this could cause some revision of the assumptions made in preparation. It is from the different valuations of the issues that the shape of the settlement emerges. Where the parties have differing valuations of the tradables, they can trade them for what they want.

Only when I was certain that I fully understood the developer's interests and how he prioritized them, would I start to frame a proposal, which is a tentative solution to the problem.

Expressed in the form of a condition (which might be specific or non-specific) the proposal would state what I would require if I were to offer the developer what he wanted. Proposals must appear to be realistic to the developer or there could be a setback early in the negotiations.

If my entry price is too high, the developer might suspect a 'red' attempt to exploit him and could retaliate with red counter-proposals that exaggerate his demands and minimize what he is offering in return. This would send us both back to the debate phase, perhaps into destructive argument.

Framed properly, a proposal should elicit open questions (those questions starting with: How? What? Where? When?) about my vague or tentative offer.

We can only negotiate proposals. We cannot negotiate debate or arguments. Proposals must address both parties' wants if they/we are to move forward. The condition is the price I want the developer to pay for the site (my offer) my client is willing to sell.

5 *What in your view are likely to be the main areas of contention between the developer and the owner?*

The main area of contention will be over the amount of the first instalment for the purchase of the site.

The owner needs to deposit £250 000 with the Jersey authorities in 21 days' time. The developer is initially prepared to pay the first tranche of only £100 000 on completion of contracts in 14 days' time, the second tranche of £100 000 in around 8 months' time, once planning permission has been obtained.

A secondary area of contention is the timing of the entry of the construction team. Although the owner only needs up to 3 months (it could be less, once he puts the business on the market) to secure an orderly sale of his caravan business, he might be willing to let the developer in earlier than this to part of the site to build and open the restaurant (thus improving the developer's cashflow). This might entice the developer to agree to a different (how different?) first instalment of the total purchase price.

Requiring the developer to increase his offer by 150% on the first instalment would probably only work if my client were to agree to a much lower sale price than £350 000, or if he were willing to offer something in return. For example, he could agree to fund the costs of moving and refurbishing the petrol station in 6–12 months' time.

If meeting the 21 days deadline has highest priority, the owner has to be prepared to be flexible on the issues. If the deadline is not critical (he is ambivalent about retiring to Jersey), he can afford to take a more robust line with the developer.

Part 2: Essay Questions

1 *Which debate behaviours are likely to be effective and which are likely to hinder settlement or deadlock the negotiation?*

In the debate phase both sides should aim to discover each other's interests and inhibitions so they can formulate tentative solutions to the negotiations. They

should, therefore, aim to find out as much as possible about the other side's concerns and how they view the issues. A negotiated settlement is an exchange and, as such, can only take place if each side sets different values on the tradable issues. In debate the negotiators must tease out of each other the valuations they place on these tradables. Both parties' consent is required in negotiation, so it is essential that each party feels it is getting something out of the settlement or they will not give their consent and there will be no agreement.

To stimulate effective debate, it is better if both parties make constructive statements about how they view the issues without, for instance, interrupting or irritating the other negotiator. Statements followed by pertinent and courteous questioning and listening will probably elicit more effectively than any other means the information both sides need.

Assurances (e.g. that both sides are searching for a settlement), frequent summaries of what has been discussed or agreed to date and signalling an intention to move on particular positions (e.g. by prefacing statements with adverbs such as ('usually', 'normally', etc.) help both sides to appreciate the other's point of view. Careful listening (even when one considers the other side to be 'factually' mistaken), especially when the other side is signalling its willingness to move, is paramount.

Destructive arguments and behaviour are much more likely to hinder the negotiations than to help. Interruptions, assertions, threats, point-scoring and blaming the other party will only increase the temperature and will hinder the Red Style negotiator's ability to learn about the views of his opposite number. Aggressive behaviour will probably only stimulate counter attacks and escalate into deadlock or worse. Since this is a negotiation, and both parties consent is required, coercion is not a valid approach to reaching a lasting settlement.

2 *Why does a tactical approach to negotiation tend to produce a 'Red Style?'*

A tactical approach to negotiation involves the use of ploys to gain one-sided advantage, and these have been popularized by certain authors (such as Chester Karrass), usually based on their first-hand experience of negotiating.

In looking at the styles of negotiators, two extreme types of behaviour can be identified. A blue stylist pursues negotiation with a view to both sides gaining something (WIN–WIN), as opposed to a red style of aggressive competitiveness, where the red negotiator tries to win at the expense of the other (WIN–LOSE).

The blue style is grounded on a tentative trust between the two parties, on an assumption that what they say in debate is factual and presented unemotionally, that they are both looking at interests and issues – not personalities – in trying to reach a settlement and that they are able to reveal their interests and inhibitions so that proposals which address these concerns can be formulated without risk of onesided exploitation.

A purely tactical approach implies that one side is trying to 'put one over' the other by using 'dirty tricks' or ploys intended to apply manipulative pressure to give in.

For example, one tactic called 'the Krunch' involves a prospective buyer saying to a seller that he loves the seller's product but cannot buy at the seller's 'best' price,

leaving the only option to the seller (apart from not doing business) of dropping his price without offering anything, other than an agreement to purchase, in return.

The seller might suspect red behaviour on the part of the buyer, because of the implied threat of 'no reduction in price means no deal' and he may well retaliate with assertions and/or counter threats (placing the buyer on a 'blacklist'), leading to deadlock.

Another tactic called 'the nibble' involves one side constantly attempting to shave the other side's prices and terms at every stage of the negotiations (and during implementation). The appropriate counter to this tactic is, of course, to inflate the initial quoted prices to give you room for manoeuvre. This reinforces the buyer's suspicions that all sellers pad their entry prices. Provided that both parties are aware that initial selling prices are padded but sellers are prepared to negotiate and be more flexible, no great harm is done.

But 'the nibble' calls for repeated attacks on the other side's prices without offering anything in return. Without something in exchange the other side is being asked to break a cardinal rule of negotiating: never to give anything away however small or insignificant. Nibble tactics will merely raise suspicions in the mind of the other side and could lead to retaliations and even deadlock.

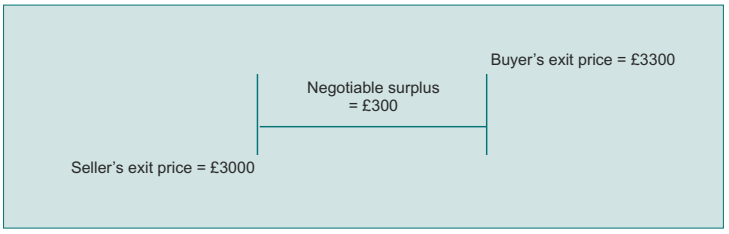
However, there are exceptions. In the case of someone encountering extreme blue style behaviour in the other negotiator – diffident, cringing and eager to please nibble tactics may increase a share of the 'negotiator's surplus' accruing to himself at the other side's expense. Nibbling can provoke red style responses against the one using the tactic. He might well find that next time around his opposite number is replaced by a more aggressive opponent who will be determined to even things up by grabbing a larger slice of the negotiator's surplus, thus rendering the nibble self-defeating in the longer run.

3 *How does the concept of the negotiator's surplus assist analysis of the negotiator's dilemma?*

Using the example of someone wanting to sell a used car, assume that the seller quotes a price of £3500 (his entry price) but he would be willing to come down to £3000 (his exit price). A potential buyer is considering offering £2800 as the initial offer (his entry price) but would go as high as £3300 for a good model (buyer's exit price).

It can be readily seen that the two ranges overlap in the middle, called the settlement range (i.e. from £3000 to £3300).

Simply splitting the difference between the two overlapping exit prices would split the negotiator's surplus of £300 equally between the buyer and the seller. The sale would take place at an agreed price of £3150, i.e. £150 less than the buyer's exit price and £150 more than the seller's exit price.



However, in practice negotiators do not reveal their exit prices. To do so would give the other negotiator an opportunity to revise his own entry and exit prices and exploit his knowledge.

Even if both sides agree to reveal their exit prices, as a (foolhardy) gesture of good faith, say, how do they know the other side is not bluffing? Each negotiator, if he acts in his own rational self interest, will attempt to increase his share of the negotiator's surplus by trying to tease out the other side's exit price.

The dilemma facing the two negotiators is that they cannot be sure how they have shared out the negotiator's surplus (equitably or otherwise) without knowing the other side's exit price, but to disclose an exit price gives an advantage to the other negotiator, unless it discloses a false one.

The opportunity of winning a slice greater than 50% of the surplus at the expense of the other negotiator, elicits either fear (of being sold out) or greed (the temptation to seize more than a fair share), which is a lethal combination. The appropriate behaviour would be to bluff by revealing false exit prices. This could cause the settlement range produced from these particular exits to be smaller than the true one and lead each negotiator to be more tenacious over giving ground because he suspects the other of cheating.

Where exit prices do not overlap, and where price is the single issue for the two parties to negotiate, it is usual for negotiations to break down at the very first meeting. Instead of a fruitful exchange, where both negotiators exchange something of lesser value to one (e.g. money) for something of greater value to the other (e.g. a used car), they both end up worse off because their combined attempts to bluff the other into accepting a smaller slice of the cake created a failure to agree to do business together.

In order to improve the ability of each party to trust the other's exit prices, one solution would be to repeat a series of trades at lower volumes. That is, instead of one 'all or nothing' sale, a series of smaller deals is struck, such that both parties stand to gain from continuing to participate in future deals.

Supermarket prices are on a 'take it or leave it' basis. If the shop gets its prices hopelessly wrong, it will not sell any items and would be forced to reduce its prices until it did so.

An offer of 'money back if not totally satisfied' encourages buyers to believe that the seller's prices are appropriate for the quality offered, which they test through many smaller purchases. If the purchaser wishes to undo the deal, he can do so at no cost to himself. In this case the retailer has an overriding interest in getting his prices

right – to build and maintain a good reputation in the market-place as an aid to greater sales and a source of competitive advantage.

In one-off deals, such as used car sales, where the parties are previously unknown to one another and where there is little or no likelihood of a continuing relationship, it is almost impossible to solve the negotiator's dilemma. Both parties have nothing to lose by bluffing, and something to gain.

Yet of course, if they both adopt this approach, they might both come off worse than if they had co-operated and agreed to give each other honest 'exit prices', but even if they did so, neither would know for sure that the other negotiator had done so!

Appendix 2

Answers to Review Questions

Contents

Module 1

Exercise 1D

1 The correct answer is False. The prescriptive advice could be at variance with the available options, e.g. 'You must reject his offer and wait until he improves it'. This may not be possible if an immovable deadline is imminent and you must settle or lose everything.

2 The correct answer is False. While some descriptions of negotiations are biased, they need not be. The verbatim account of a negotiation which includes everything that happened could be neutral, though the interpretations of the negotiators' motives could be biased.

3 The correct answer is False. A scientific prediction can be tested – the predicted event either occurs as predicted or it does not. For example, the prediction 'In this negotiation with the buyer I will achieve at least a price of 2 million ECUs for the licence' can be tested by examining the price you agreed to and comparing it with your predicted price. If your price was at least 2 million ECUs your prediction has been validated; if it is less than 2 million ECUs, your prediction has been disproved.

There is a class of 'predictions' which cannot be tested. These predictions are regarded as being unscientific, i.e. confined to the realm of opinion. For example, 'I could have got a better price than the one you agreed to in that negotiation' cannot be tested. If you negotiate with the buyer this excludes me, and if I negotiate with the buyer, this excludes you. As each event is mutually exclusive, my prediction,

which compares the outcome of one event with the outcome of the other, is untestable. This has implications for those managers who make judgements about alternative, usually better, outcomes they could have achieved compared to the one that actually occurred in the negotiations at which they were not present.

4 The correct answer is True. Description without analysis, while useful, is not an efficient use of scarce case material. By analysing the descriptive material a lot of non-obvious insights are possible. The purpose of scientific enquiry is not just to describe but to explain. Analysis, for example, can identify categories of behaviours used by negotiators and seek a relationship between certain types of behaviours and the outcome of the negotiation.

5 The correct answer is False. A prediction can be made that a certain event will occur which is independent of any view that the event ought, or ought not, to occur. For example, the prediction that a negotiation to bring an end to hostilities (war, strikes, sanctions, communal disputes, etc.) will be stalled because one party believes it can improve its negotiating power relative to the other party from a sudden change in its fortunes on the battlefield (its troops break through, the strike spreads to neighbouring plants, the United Nations votes against trade sanctions, the leader of the other side falls into public disgrace, etc.) does not imply that the first party ought to stall in this way. A prediction might also be prescriptive, such as in the statement: 'Because of changing circumstances if you increase the pressure you will secure an advantage and therefore I recommend that you do so'.

6 The correct answer is False. Prescription by its very nature is open to subjectivism when it deals with what **ought** to happen (in your or my view) and not with what actually happens. However, prescription is not necessarily purely subjective. Advice such as 'You will only obtain the result you want if you undertake this action' will vary in its subjective content to the extent that the advice is an opinion as to what **ought** to happen rather than a prediction of what **will** happen, either based on the evidence of the outcomes of similar situations across a wide number of differing circumstances or on deductive reasoning. Remember, however, when giving advice that it is more often given than taken.

Module 2

Exercise 2B

Your diagram should look like Table A2.1.

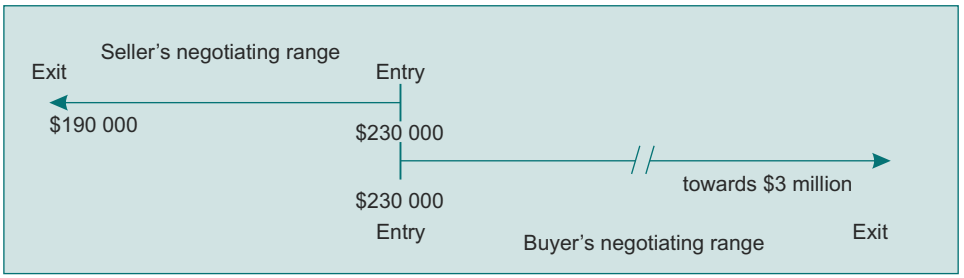


Table A2.1 The run-down bar negotiation

Module 3

Exercise 3G

In Figure 3.1 the differences in valuation make trading across tradables a possibility. We could trade our high for their medium, our medium for their low and our low for their high.

In Figure 3.2 the identical valuations do not make negotiation easier but they are not such an impassable barrier as they seem. A negotiated solution would depend on two aspects of the identical valuations. First, is there an overlap in the ranges for each of the tradables between each negotiator's entry and exit points? If yes, we can trade across the overlaps. Second, is it possible that movement on one or two of the identically valued tradables would ensure movement by the negotiators on the third tradable? If yes, we can trade compensatory movement in one or more tradables for movement in one or more of the remainder.

Figure 3.3 is more representative of the real world – valuations tend to be mixed. Here we could trade movement between our medium and their low and their medium and our low for compensatory movement between our high and their identical high.

Review Questions

3.1 In a dispute with a supplier over his failure to perform his contract, the buyer should:

(i) *Check the contract carefully for evidence.* No. The answer to the problem may or may not lie within the contract. Too legalistic an approach to a problem can hamper finding a negotiated solution.

(ii) *Assess who is to blame.* Almost certainly a waste of time. Blaming produces justifications and leads to emotional rows, not a solution to the problem.

(iii) *Collect data on the failure to perform.* Yes. Out of these choices, this is the best line of action. Without accurate data you could end up as in (ii) but with the data you can set out what is wrong and what you want to put right.

(iv) *Arrange for a quotation from another supplier.* This might be appropriate at some stage but certainly not as a priority. It is best to deal with the source of the problem first and then look for options if necessary.

3.2 Negotiators have interests because:

(i) *Some issues are more interesting than others*. No. They may be interesting but that is not the same as a negotiator's interest.

(ii) *They are motivated to prefer some outcomes to others*. Yes. It is the preference for a particular outcome that suggests the presence of a negotiator's interest.

(iii) *They prefer some issues to others*. While negotiators certainly have preferences for different issues, these preferences are not the same as their interests. Their preferences for issues should reflect their interests, though they do not always do so when negotiators react emotionally to some issues. Indeed, turning an issue into a principle could damage a negotiator's interest.

(iv) *Their positions are negotiated but their interests are not*. True, but not relevant to the statement about why negotiators have interests.

3.3 An issue is:

(i) *A topic for discussion*. Negotiating is more than a discussion. It is about making a decision.

(ii) *A collection of positions*. An issue certainly consists of positions but that is only part of the definition.

(iii) *An item on a negotiator's agenda*. No. It is necessary that the issues are on the agenda but it is not sufficient for a topic to be on the agenda to make it an issue.

(iv) *A decision for negotiation*. Yes. An issue is defined by its role in the negotiation as a decision.

3.4 A position is:

(i) *An obstacle to agreement*. It could be an obstacle but then it need not be, so this definition is too restrictive.

(ii) *A sub-issue*. No. A position is taken on an issue.

(iii) *A point in a negotiation range*. Yes. By definition, there is a range of positions on each issue. The negotiator's entry and exit points are positions, as are all points between them.

(iv) *A negotiable tradable*. A negotiable tradable could consist of several positions – that is what makes it tradable.

3.5 Negotiators prioritise:

(i) *Interests*. Some interests may be more important than others, or they may have to be tempered by others, but interests need not feature on the negotiation agenda and could be hidden from the other negotiator. A negotiator's interests might determine his or her priorities in respect of the issues.

(ii) *Entry and exit points*. No. These are set for each issue and are not prioritised.

(iii) *Issues*. Yes. It is the issues that are prioritised, as it is by trading among the issues that the negotiator finds the solution.

(iv) *Positions*. No. See answer (ii).

3.6 Which of the following is correct?

(i) *Negotiators cannot move from positions with high priorities*. Of course they can, if the trade they get is worthwhile.

(ii) *Negotiators can only trade on issues with medium and low priorities*. No. As for (i).

(iii) *Negotiators can use low priorities as 'give-aways'*. Certainly not! Nothing is 'given away'. The essence of negotiation is trading.
(iv) *Negotiators can move from any position on any issue if it suits their interests*. Correct.

Module 4

Exercise 4D

Closed questions: 1, 2, 4, 6, 7, 9.
Open questions: 3, 5, 8, 10.

Review Questions

4.1 In the debate phase you should aim to:

(i) *Complete it as quickly as possible to avoid argument*. Trying to hurry a negotiation may provoke argument rather than avoid it.
(ii) *Discover the other negotiator's interests and inhibitions*. Yes. The negotiator requires information, particularly about the other negotiator's interests and inhibitions. No proposal can sensibly be made without some preliminary exploratory questioning *and* listening.
(iii) *Ensure that the other negotiator understands your positions*. Your positions are more likely to be revealed in the proposal phase.
(iv) *Inform the other negotiator of your interests and inhibitions*. While it is in his or her best interests for the other negotiator to seek information on your interests and inhibitions, it does not always follow that they will do so.

4.2 Negotiators signal in order to indicate:

(i) *A willingness to move*. Yes. Though the movement must always be conditional.
(ii) *A desire for the listener to move*. That is the implication of the willingness to move but hoping for a one-way movement on behalf of the listener could be futile.
(iii) *That a proposal is imminent*. No. A proposal may or may not be imminent but could be delayed until you have sorted out whether and how far they are willing to consider movement and on what terms.
(iv) *A preference for compromise*. Not quite, as you could be testing the other negotiator's willingness to compromise.

4.3 The most effective way to handle a disagreement is to:

(i) *Point out where the other negotiator is factually wrong*. Definitely a high-risk response and certainly not the 'most effective' one.
(ii) *Ask questions*. Correct. We need to be sure what the disagreement is about before reacting, and asking questions and listening to the answers is the most effective response.
(iii) *Explain with great courtesy the grounds for your disagreement*. While courtesy is always recommended, explaining why you disagree before you know for sure what you disagree about is not sensible.

(iv) *Summarise the case against the other negotiator's views.* You might eventually be required to do this but this should follow a series of questions rather than precede them.

Module 5

Exercise 5D

1. 'If you support our claim for landing rights in Germany, I would seriously consider supporting your proposal for landing and pick-up rights in Singapore.'
2. 'If you accept two persons per room, I could consider providing you with more bed-nights per week.'
3. 'If you look at the manning levels, we will look at the shift differential.'
4. 'If you tell me what would meet your client's needs, I could be prepared to respond with a positive offer.'
5. 'If you accept the changes in the vendor's contract that I have set out in my paper, I will consider the possibility of your becoming a sole supplier to our sites.'
6. This is an acceptable form of presenting a proposal as it stands (in form only, for without knowledge of the circumstances we cannot comment on its content).

Review Questions

5.1 Your terms and conditions include a protection against consequential loss and the other negotiator has signalled his unwillingness to accept this. Do you:

(i) *Ask him to explain his objections to consequential loss?* Probably the best response. His objections may be major or minor and it is best to find out what the other negotiator considers to be important rather than to assume that you know the answer. On the basis of his answer you can respond with assurances, amendments to your requirement, or an alternative method of achieving your needs. You could also decide, of course, that his objections are more dangerous to you than spurious in themselves (that he is likely to fail to perform and escape his obligations) and that your best response is to insist on protection, even at the cost of not doing business with him.

(ii) *Defend the necessity of your business having a consequential loss provision?* This would not assist progress in the negotiations as you do not know yet on what grounds he is opposing a consequential loss provision.

(iii) *Ask for a proposal on how he intends to cover your need for protection against a failure of performance?* A close alternative to answer (i) but not necessarily the one to be chosen first. Once you know the basis of his objections you could use this response.

(iv) *Tell him that a failure to sign a consequential loss provision means that no business can be concluded with him?* As with answer (ii), this is too peremptory and best left until you have listened to his answer to (i).

5.2 The correct answer is False. While a proposal is generally preferred to an argument, it must always depend on the type of proposal to determine whether the proposal assists or hinders the negotiation.

5.3 The correct answer is False. An unconditional proposal is a 'give-away' and can damage the negotiator's chances of making progress by stiffening the resolve of the other negotiator to stick to his positions.

5.4 The correct answer is True. A conditional proposal protects the negotiator from one-way concessions.

5.5 The correct answer is False. Proposals should always be conditional but the use of assertive language is not mandatory, though it is advised.

5.6 The correct answer is C. While answers (A), (B) and (D) might be correct in some cases, in all cases proposals should be conditional.

5.7 The correct answer is C, D. Of the other answers you should note that (A), *specific in the condition and specific in the offer*, defines a bargain, and (B), *vague in the condition and specific in the offer*, is not much better than an unconditional proposal.

5.8 The correct answer is B.

Avoid proposing a change and wait for the other negotiator to propose a change. This is asking the other negotiator to take the initiative against his own interests in maintaining the status quo and is therefore likely to be futile.

Propose a change and not wait for the other negotiator to propose. Correct. If the other negotiator is happy with the status quo he or she has no reason to initiate change. To wish for change but not to propose it is a recipe for an argument.

Avoid proposing a change until the other negotiator asks for a proposal. This could lead to a long session, certainly longer than answer (i), and might not be arrived at.

Propose a change only if the other negotiator signals a willingness to change. This is asking a lot of the other negotiator who might be more than happy to leave things as they are and might never indicate a willingness to change at all.

5.9 It is likely that your own words will be different from mine, but if they convey the same meaning then they are acceptable. The main point to remember is to ask questions to determine the content of the non-specific offer in a proposal.

How would you respond to the following statements?

(i) 'Given your insistence on a penalty clause, we require a premium for performance.'
'What sort of premium do you have in mind?'

(ii) 'How do you expect my people to agree to the new shift times without some compensation for unsocial hours?'
'What precisely do you mean by compensation?'

(iii) 'If you agree to a higher advance payment, I would offer you a better deal on payment terms.'
'What do you mean by a better deal on payment terms?'

(iv) 'If you drop your claim for out of hours payments, I would consider an *ex gratia* payment.'
'What amount of ex gratia payment do you have in mind?'

5.10 The correct answer is C.

Say 'No'. The least helpful response because it tells the other negotiator nothing about your position and usually leads to an argument.

Stop negotiating. A futile gesture. The proposal may be a misjudgement on his part, not a fixed position or solution.

Ask for an explanation. Correct. By finding out more about the basis for the proposal you will gain additional information about the other negotiator's attitudes and, perhaps, an insight into his interests.

Counter-propose. It is best not to counter-propose immediately. Wait until you know more about the basis of the other negotiator's proposal.

5.11 The correct answer is C.

Insist on them being linked together. Partly correct but as it stands it is too abstract an approach. The other negotiator will be wary of your insistence on something for which he is unclear as to its effects on his positions.

Judge them as separate issues on their own merits. Dangerous if it means that you lose negotiating room on the remaining issues as each issue is settled.

Decide upon nothing in finality until agreement is reached on all of them. Correct. 'Nothing is agreed until everything is agreed' is a workable and sensible rule of thumb for separate issues.

Be tidy in your approach to difficult issues. True but not relevant to the separate issues problem.

Module 6

Exercise 6A

1. Rental price per square foot
2. Full Repair and Insurance (FRI) lease
3. Length of the lease
4. Intervals between rent reviews
5. Open rather than upward-only reviews

Exercise 6C

My list, by no means complete, would include the following. Highlight those you included and add those I have missed.

Wage rate per unit of time (hourly, weekly, monthly, annually)
Grading policy
Premiums for skills or scarcity
Performance measures
Commission
Incentives (individual, group, company-wide)
Shift allowance
Overtime rates (time off in lieu)

Contract duration (1 year, 15, 18, 20 months, 2 years)
Sick schemes
Medical benefits
Holidays
Special leave (disability, bereavement, maternity, jury, military and public service)
Share options and savings schemes
Pensions (contributory, early, death in service rights)
Training (days per year, who pays)
Hire, fire and quit rules
Purchase of output
Job security (retraining, relocation)
Rehabilitation (alcohol, drugs, accident)
Special allowances (dirt money, 'Red circled earnings')
Hours of work (flexitime, 9-day fortnights)
Dress (safety clothes)
Disciplinary rules and procedures
Rights to manage
Consultation
Job flexibility
Union facilities
Use of contractors and part-time employees
Car policy and parking
Briefing and communication with employees
Recreational facilities
Long-service leave/awards
Promotion policy

Module 7

Exercise 7D

1 Red, because it implies that the man with experience has a duty to teach the man with the money a lesson.

2 Blue, because it implies that a man's soul is worth more than the world and that gaining the world can only occur if he sacrifices his soul.

3 Red, because it implies that a concern with one's scruples (the 'heat') shows that you cannot take the pressure of success.

4 Red, because it implies that to get to the top you have to be tough and not soft-hearted.

5 Red, because it implies that the toughest stance, the deepest pockets, 'wins'.

6 Blue, because it implies that you can trust his word even unto his own loss.

7 Blue, because it implies that there are other things besides fast bucks motivating them for a longer-term deal.

8 Red, because it implies exploitation of the gullible. (From a wisecrack of Bob Hope's.)

9 Purple: because it combines a Red demand ('Give me') with a Blue offer ('I will give you').

10 Red, because it implies that power will decide the issue.

Module 8

Exercise 8A

1 A simplified version of a Negotek® PREP Planner showing Bill's and Jack's priorities of the items for exchange

2 Items of low priority or value are exchanged for items of higher priority or value. For example, the pen is of low value to Jack and of high value to Bill, while the book is of medium value to Jack but of low value to Bill. On the basis of their relative value an exchange is possible in which Bill gets the pen in exchange for Jack getting the book.

3 Bill gives up four low value items – the book, whip, ball and bat – and received the pen (high), toy (medium) and knife (high); Jack gave up three low value items and received the book (medium), whip (low, ball (low) and bat (low). As long as the items Jack gave up are of lower value to him than the items he received, he will willingly complete the exchange.

Exercise 8B

Bill would be keen to exchange his ball and bat, say, for Jack's knife because he values the knife at 6 and his own ball and bat at 2 each, while Jack values the knife at 2 and he gets back a ball and bat worth 2 each or 4 in total.

Exercise 8C

Moving to **B** gives proportionally more utility to Paula and moving to **D** gives proportionally more utility to Quirk, with correspondingly smaller increases in utility to the other (assuming for simplicity that Paula and Quirk have comparable interpersonal utilities). Paula and Quirk respectively might propose to move to these points because they improve on the distribution of utilities they each get from the status quo at **A**. In the negotiation dance that follows, the negotiators might gradually move to a position, such as **C**, because it unambiguously equally benefits both. They might agree to **C** on equity grounds alone (coincidentally, **C** would maximise their net gains in the manner of a Nash solution).

Exercise 8D

People can approach the behaviour required for a Nash solution provided that they receive appropriate training and that their organisations are prepared to consciously overcome their risk aversion to open negotiating relationships.

Exercise 8E

You should by now be able to recognise the Blue style implied in principled negotiation, but do not confuse it with being a soft negotiator, in the sense of giving in and being willing to compromise for the sake of peace. Fisher and Ury explicitly, and correctly, reject a soft response to what you know as a Red style negotiator. You do not avoid intimidation by giving in to it.

Exercise 8F

The important thing is whether there is an overlap in the exit positions, not whether their entry positions are apart – we expect them to be so. It is not known what the exit positions of each side were on this issue, but the negotiations got side-tracked here because the Soviet unwillingness to consider additional inspections became, for the USA, a litmus test of their intentions, on verification and as no US government would be electable that signed an arms treaty without a sound verification clause in it, the talks stalled until the Soviets, under Gorbachev, took a more realistic – and thereby trust-building – stance on verification.

Exercise 8G

If a negotiator fails to address a major inhibition of the other negotiator, it is likely to stall progress in the negotiations, and, in most circumstances, to excite suspicions that lead to a Red–Red choice in the negotiator's dilemma, not because they want to but because they must.

Exercise 8H

The interests of parties, it should always be remembered, are not always reconcilable. For example, child molesters are unlikely to be able to negotiate a 'free molesting zone' with the city authorities.

Module 9

Exercise 9A

1 The Exhibit provides clear evidence of the Red bargainer's approach to deal-making. The behaviour advocated by its author, Philip Sperber (1983, *Fail-Safe Business Negotiating: strategies and ploys for success*. Englewood Cliffs, N.J.: Prentice-Hall) does very little for trust-building and constructive negotiation practice.

2 If Sperber's implied ethics do not make your toes curl, I suspect that nothing will (though this is only my opinion!). *Ex Bona Fides Negotiari!*

Exercise 9B

Neither (a) nor (b) is a correct answer. The additional information that imaginative participants at seminars sometimes invent and rely upon to make their decision is absent from the 'Camel Question' question.

This is the point. Without more data you cannot sensibly make an assessment of the relative power of the two Arabs. Yet the majority who choose answers (a) or (b) do just that! And from observation, and not a little introspection, I think we all fall into the error of judging who has power on severely limited data from time to time.

Exercise 9C

1. *A Red ploy used by a Blue stylist to test for Red play by the other negotiator?*
   Perhaps. Blue negotiators can use Red ploys to test for the game the other negotiator is playing.
2. *A Blue ploy used by a Red stylist to test for Blue play by the other negotiator?*
   The ploy is Red (it is based on distrust).
3. *A Red ploy used by a Red stylist to test for Red play by the other negotiator?*
   Red stylists do not need to test for Red play because they always assume the play will be Red.
4. *A Red ploy used by a Red player against the other negotiator?*
   Correct. It is a Red ploy used against the other negotiator.

Exercise 9D

It is a Red style objective if this is your automatic response to any proposal.

Exercise 9E

It requires that the other negotiator respond with a Blue style – a more likely response would be for two Red style negotiators to do battle with Red ploys and their Red counters (known in sales training as 'overcoming objections').

Exercise 9F

It is a buyer's Red ploy, not so much because it is a test for a slack price (a seller's Red ploy in having padded prices), but because the buyer assumes that there is slack in all prices. Its long-term effect is for sellers to always pad prices and for buyers to always question them.

Exercise 9G

This can be a heavyweight Red ploy and one to be very wary of if the intention is to develop a long-term relationship.

Module 10

Exercise 10A

The obvious ones are:

(i) You could wrongly assess the other person's personality.
(ii) You could have wrongly assessed your own.

(iii) You could have got one personality right and the other wrong.
(iv) One or both of you could change your behaviour according to circumstance, or the role you are playing

Exercise 10B

There is a major difference between the Two Styles analysis (albeit with four categories) and the personality analysis of negotiation. The two styles refer to behaviours, which can be changed to suit circumstances, while personality typing refers to a person's personality traits, with which (normally) they are stuck. It is more realistic to consider that people can change their behaviour than that they can change their personality, but if people can change their personality at will, the case for personality typing becomes even weaker than it is.

The 16 possible combinations personalities for two people negotiating are:

		YOU			
		Competitor	Collaborator	Accommodator	Avoider
THEM	Competitor	X	X	X	X
	Collaborator	X	X	X	X
	Accommodator	X	X	X	X
	Avoider	X	X	X	X
		= 16 combinations that could meet to negotiate together			

The Two Styles approach recommends that negotiators develop the behavioural skills of the assertive Blue stylist and that, in the main, if they do so they can handle any and all of the other styles (openly aggressive, Red extremist, moderately devious Red or softer Blue extremist or moderately Blue assertive). They do not need to identify 16 combinations and only need to apply one behavioural style.

Exercise 10C

Most cultural studies into negotiating behaviour use similar research techniques to identify the influence of cultural traits on negotiators. Questionnaires are constructed to examine the extent to which negotiators from different countries conform to certain value systems (Are they collectively or individually driven?; Do they regard the law as an absolute or as a relative code for their conduct?; Are they results or relationship driven?; Is it family to state or state to family from which they derive their personal loyalties; and so on).

On the basis of these questionnaires, cultural types are identified. They are subject to similar fallacies as are derived from personality traits. A person may be Japanese or Belgian culturally but they could also be driven by the situation or, though brought up in a particular culture, they may adopt the characteristics of another culture. Not all Japanese are collectivist in their outlook, nor all Americans individualistic.

The global economy is challenging, where not breaking down, cultural stereotypes.

For works that imply these reservations are misplaced see: Hampden, C. and Trompenaars, F. (1993) *The Seven Cultures of Capitalism: value systems for creating wealth in the United States, Britain, Japan, Germany, France, Sweden and the Netherlands*. New York: Doubleday, and Hofstede, G. (1980) *Culture's Consequences*. Beverly Hills: Sage, and *Cultures and Organisations: software of the mind*. New York: McGraw-Hill.

Module 11

Review Questions

11.1 A cultural relativist argues that different peoples living in different countries will approach activities like negotiation with different behaviours because their attitudes and belief systems are different. Knowing about these differences is essential if the negotiator is to avoid assuming that each party to an international negotiation sees the world in the same way and acts accordingly, often to his detriment. Examples abound from cultural relativists that purport to show the negative consequences of a lack of awareness of other peoples' cultural norms. These mistakes are avoidable, the cultural relativist believes, if the differences between national groupings (surrogates for cultural differences) are studied and the legitimacy of different people having different perspectives on business and personal relationships is understood and accepted.

A universalist perspective is different. It sees negotiation behaviour as universal across all cultures. Negotiation is defined as the 'process by which we seek for terms to obtain what we want from somebody who wants something from us.' This process is known to all cultures, national groupings and language groupings, at all levels of techno-economic human societies. That there are differences between human groupings is undeniable. Language is probably the most significant. But differences on their own do not amount to evidence that different groupings, speaking different languages, use different processes of negotiation.

Research across wide cultural differences, such as conducted by Phillip Gulliver between North American labour relations teams and Tanzanian Arusha villagers, show a commonality in the negotiation processes used by the participants. Gulliver's 'eight step' model which he used to compare the negotiations in the two continents was similar to the 'four phase' model used by Kennedy to analyse business negotiations in Europe and Asia. Observation and analysis of actual negotiations in different cultures does not support the cultural relativist approach, and the absence of research by cultural relativists into negotiation, as opposed to research into data obtained by attitude surveys (e.g., Hofstede and Trompenaars), suggests that the cultural relativist approach is less than safe for negotiators to follow.

On what then should negotiators concentrate their scarce time and resources to improve their competence? Which of competence in negotiating skills or competence in cultural awareness will give them the best results overall? For the international negotiator the former appears the better use of scarce resources if negotiation is a universal process. Improving one's negotiating skills has benefits in any negotiation which requires the use of these skills, while improving one's cultural

awareness for a particular culture (assuming such awareness is critical to success) only benefits performance within that culture and leaves open the question of what is appropriate for other cultures.

Confidence in this conclusion is gained by considering if there are alternative explanations for negotiation failures between negotiators from different cultures than the explanations asserted by cultural relativists. The evidence suggests that there are other explanations, namely those arising from common errors in a person's negotiating skills. Making unilateral concessions in response to the other negotiator's silence is a negotiating error in Japan, North America, Europe and a souk in Morocco; jumping straight into business before the other negotiator is ready to negotiate is a negotiating mistake in Abu Dhabi and in any other country (think of two Sumo wrestlers eyeing each other for sometime until they are ready to pounce, which is akin to two negotiators waiting until they are ready to negotiate); interfering with another party's team selection, arrangements, or conduct is an error of prime magnitude and the consequences of 'loss of face' are not confined to Asian negotiators; and being disrespectful – or appearing to be so – of a party's national origins, history or social arrangements upsets everybody affected (including Scots when asked 'which part of England are you from'!).

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