

LSS Negotiation Competition Guidebook 2017



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The Clayton Utz Negotiation Competition is designed to help students develop their skills as negotiators. These skills are important for any aspiring lawyer, but can equally be put to use in everyday situations. It is our hope that by participating in the competition you will enjoy yourself and challenge yourself, as well as build on your skills to solve a wide variety of problems that will inevitably arise in the future.

We thank our sponsor, Clayton Utz, for its support and encouragement in making this an exciting and valuable competition to be a part of. Clayton Utz has generously made its resources available for the competition.

We look forward to meeting and engaging with all participants this year.

Jordan Osrin and Alex Port

2017 Negotiation Competition Officers

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What is Negotiation?

The competition is a negotiation session between two teams of lawyers, each representing a hypothetical party. Each team consists of two members only, who shall remain together for the duration of the competition. The competition will have seven rounds in total, including the Grand Final. All teams will have the opportunity to compete in the first two rounds. From Round 2, the competition will take the form of a knockout-style.

All competitors will receive their brief at **1pm on the day prior to the negotiation**. The brief will contain a common set of facts setting out the background of the scenario. Each team will also be given confidential information from their 'client' that is only known to their side. Teams are expected to read over the briefing and devise a strategy. It is important that teams have a detailed knowledge of the problem, so that they do not need to refer to basic information during the negotiation. The more practice and preparation teams undertake, the better.

After preparing, the teams will come together to discuss the various issues and attempt to come to an agreement that best meets their client's instructions outlined in the confidential information. Teams should finish the negotiation by writing down their agreement.

Once the negotiation is over, the judge will speak with each team privately to confirm and clarify aspects of the negotiation. Each team will have the opportunity to explain their strategy, and how their approach best served the client's interests. Team reflections are not scored.

Once both teams have completed their reflection, the judge will consider the outcome and decide on a winner. The judge may give brief feedback regarding each team's performance. The decision of the judge is final and cannot be appealed.

Structure

- The negotiation session goes for **40 minutes**.
- One, two, or three judges may be present to mark your performance.
- Begin the negotiation by introducing yourselves to the other team and stating the client you are representing.
- Each team may take one 2 minute time-out during the negotiation. No time-outs may be taken inside the final 10 minutes.
- With 5 minutes remaining, teams are advised by judges that they should come to an agreement and, if relevant, put the agreement in writing. If the judge is not clear on what agreement has been made, the judge may consider it to be no agreement.
- Once the negotiation is finished, each team is given 2-3 minutes to privately reflect upon their performance with the judge. Examples of what may be discussed include, but are not limited to:
 - Interpretation of what the client wanted
 - Team strategies
 - Relationship with other team
 - Outcome
- Judges will call both teams into the room, provide overall feedback, and will announce a winner.

NOTE: There is to be no communication between competitors as to the nature of the confidential information held by the other side until all of the matches in that round have been completed. Any competitors who collude may be expelled from the competition at the discretion of the Negotiation Competition Officers and/or the judges.

Marking Criteria:

Primary consideration: <i>Which team best served their client?</i>	Score/10 Not at all moderately well very well extremely well	Total
1) Understanding and advocating for client's interests (30) <ul style="list-style-type: none"> • How well did team identify client's main and subsidiary interests? <ul style="list-style-type: none"> ○ Appropriate weighting • How well did team advance these interests? <ul style="list-style-type: none"> ○ Consider whether relationship with opposing team was preserved 	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	
2) Flexibility (20) <ul style="list-style-type: none"> • How well did the team respond to opposing team's interests, requests and approach? • How well did team respond and adapt to new information from opposing team's secret facts? <ul style="list-style-type: none"> ○ Did the team use new information in a constructive and strategic manner. 	1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10	
3) Favorable outcome (30) <ul style="list-style-type: none"> • Would the client be satisfied with the outcome of the negotiation? <i>(1 being dissatisfied, 15 being strongly satisfied)</i> • What is the state of client's primary and subsidiary interests? <i>(1 being poor, 15 being strong)</i> 	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	
4) Presentation (20) <ul style="list-style-type: none"> • How well did team members work together? • Voice tone, body language, business attire 	1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10	
TOTAL (100)		

Rules

- No law may be introduced into the negotiation, other than that provided in the problem. No team will be at an advantage by virtue of having done more subjects at law school than another team.
- Any non-verbal communication with the other team must be restricted to one single-sided A4 sheet of paper with size 12 font.
- Time restraints must be adhered to.
- If teams wish to swap time slots, they must do so personally via the Negotiations Facebook page. Once confirmed, an email must be sent to **at least 48 hours before** with the following template attached:
 - o Your team name:
 - o Current time allocation:
 - o Name of team you are switching with:
 - o Time slot you are switching into:
- Teams must stay within the facts presented to them. Judges retain the right to exclude external information where they see it as detrimental to the negotiation.
- Teams must remain courteous and respectful towards each other at all times. Judges have the discretion to deduct points or disqualify for disrespectful behaviour.
- If your team chooses to forfeit, you must do so before the problem is released by notifying the competition coopts at lss-negotiation@lists.unimelb.edu.au. Teams may forfeit after the problem is released only in extraneous circumstances, having spoken to both the competition coopts and the directors at lss-competitions@lists.unimelb.edu.au. Teams who forfeit without regard for the rules or their opponents may be blacklisted from competing in future competitions.
- If your opponent forfeits from the competition, we strongly encourage you to prepare and compete in front of a judge. This allows you to gain feedback for your own development and receive a score which contributes to the seeding and quality of the competition

Best Practice Guide

1. Different approaches

There are a number of different approaches one can take to a negotiation. Two of the most common are the positional approach and the interest-based approach. For those interested, the classic negotiation handbook *Getting to YES: Negotiating Agreement Without Giving In* by Fisher and Ury provides an in-depth discussion on the interest-based approach to negotiating and its advantages over the positional approach. Here we provide a brief summary of the two approaches:

Positional Approach

- Each party adopts a starting position (exceeding what you actually want) and makes small concessions until they find a meeting point
- For example, when bartering at a local market a vendor may initially state the price of their goods as being higher than what they are actually prepared to accept for them. The purchaser, who knows this, will offer to buy the goods for an amount less than what is asked for. The purchaser will usually offer an amount that is less than what they are prepared to pay for the goods. The vendor will gradually lower their asking price as the purchaser gradually increases their offer until they meet somewhere in the middle.
- The positional approach turns the negotiation into a zero-sum game. That is, every concession gained by one player represents an equal loss by the other player. In the market example, every dollar knocked off the price by the vendor is a dollar gained for the purchaser, and vice versa for every dollar that the purchaser's offer is increased.
- The positional approach then is where two parties are fighting over how to split a fixed amount of pie. Every gain made by one party equals an equivalent loss by another party.

Interest-Based Approach

- The interest-based approach is centred around a focus on the interests of each player, rather than their positions. That is, it requires parties to focus on what they actually want *and what the other side actually wants* instead of each side taking a position on an issue and haggling until they meet somewhere in the middle.
- The theory is that by focusing on interests, each side can develop creative solutions to the problem at hand and enlarge the pie. The goal in interest-based negotiations is to uncover a win-win situation

where both parties can meet their interests.

- The interest-based approach works because instead of working against each other, each player works together to come up with the optimal solution. Each party shares information about their own interests which allows each player to combine that information with information they already know and come up with a creative solution that would not have been possible if each side's interests had not been revealed.
- For example, if you are negotiating to buy a house, it may be wise to employ the interest-based approach. Obviously the vendor wants the highest possible price, and the purchaser wants to buy the house at the lowest possible price, but there may be further hidden interests. If the vendor wants a quick settlement because they have already bought another house, this might be something the purchaser can promise to provide in return for a small discount. Alternatively, if the vendor is willing to be patient, the two sides may agree to a higher price but subject to the purchaser being able to secure extra financing. These considerations are important and can get lost if each side is only focused on the price. By sharing their interests and working collaboratively, the purchaser and the vendor have the opportunity to come up with a better result than simply meeting somewhere between their respective initial offers.

2. 'BATNA'

The 'BATNA' is one of the most important concepts in negotiating. It stands for 'Best Alternative to Negotiated Agreement' – that is, if you fail to come to an agreement with the other party, what is your next best option?

This is an important concept because it essentially defines the worst deal you will be willing to accept. You won't accept a deal if it places you in a worse position than your BATNA, and you should accept any deal that is even marginally better than your BATNA.

Take a salary negotiation as an example. If you go to your boss seeking a raise, your BATNA could play a significant role in determining how successfully you are able to negotiate a raise. If you work in a stagnating industry and are already paid the average salary you probably have a weak BATNA. Your best alternative to agreeing on a raise is to keep the status quo because you would struggle to find another job, and even if you could, it would probably pay the same amount. Therefore if your boss refuses to give you a raise, you don't have much leverage and would probably have to accept that outcome.

On the other hand, say you are working in a rapidly growing industry and are paid less than the average salary. This gives you quite a strong BATNA. If your boss refuses to give you a raise, then your best alternative may be to quit and find another job. You shouldn't have much trouble finding another job because the industry is growing, and when you do, the chances are it will pay more than your current job. If your boss is aware of this BATNA, they are more likely to grant you a raise than if you had the weak BATNA in the above example.

3. Techniques:

If the situation permits, you may also want to try some negotiating techniques. Here we briefly outline three common techniques: the nibble, anchoring, and 'disarming empathy'.

“The nibble”:

- The nibble is a technique whereby once you reach a general agreement with the other side on the important issues at hand, you ask the other side to throw in something small. In the eagerness to reach an agreement on the major issues, the other side might be willing to quickly agree to something that isn't going to cost them much.
- For example, imagine you are sitting in an airport lounge waiting to board your flight. An announcement comes over the PA, apologizing and stating that your flight has been overbooked and offering a \$500 credit to any passengers willing to take a flight the following day. Because you are a skilled negotiator, you don't simply take the \$500 and go find a hotel. Instead you employ the nibble technique – you approach the airline employee and say while you are interested in taking the credit and switching flights, you would also like the airline to upgrade you to first class for your flight tomorrow. And to put you in a hotel for the night. And give you some meal vouchers. These things don't cost the airline much – they were probably going to upgrade a random frequent flyer anyway, and airlines often have a stock of hotel and meal vouchers ready for inconvenienced passengers – so the airline may be happy to give them to you just so they can avoid any delays with the overbooked flight.
- The main lesson of the nibble technique is that you can't get something if you don't ask for it.

“Anchoring”

- Anchoring is a word used to describe the effect that the first offer in a negotiation often has in setting the bar for the price.
- For example, if you enter a salary negotiation for a job advertised in the \$60-\$70K range, the outcome will likely fall within that range. Furthermore if you were to walk into the meeting and immediately say you wanted to be paid \$70,000 you are likely to get paid more than if you allowed your boss to make the first offer of \$60,000.

“Disarming empathy”

- ‘Disarming empathy’ is a fancy way of saying ‘be nice’. It is a technique that has been used by an FBI hostage negotiator to buy a car¹.
- The objective of disarming empathy is to lure the other side into negotiating against themselves. You take a position that is favourable to your interests (but not unfairly so) and then sit back let the other side do all the work. But all the time you act graciously, kindly thanking the other side each time they make a concession and politely reiterating that your initial position is one that you simply cannot budge from. If your initial offer is fair and within the range of acceptable deals to the other side, hopefully the other side will gradually make concessions until they end up at your initial offer.

4. Other things to keep in mind

Teamwork

- Try not to let one person dominate the negotiation. Setting roles for each partner may help in balancing individual contribution.

Tone

- Assertiveness is better than aggression. However, assertiveness is a two-edged sword; you may establish a powerful position yet neglect to discover your opponent’s goals.

Preparation

- Preparation is very important. Understand the issues and prioritize

¹ Seriously. If you want to hear the full story you can listen to the NPR Planet Money podcast episode 425: An FBI Hostage Negotiator Buys a Car. The episode runs for about 17 minutes and can be downloaded or streamed for free at <http://www.npr.org/sections/money/2012/12/21/167802325/episode-425-an-fbi-hostage-negotiator-buys-a-car>.

your client's interests. Think of creative possible solutions that could benefit both parties. Read between the lines.

- Parties are free to bring an agenda, prepared agreements, electronic devices, whiteboards, spreadsheets or any other tools into the negotiation. The appropriateness or requirement of these tools will depend on several factors including your client's position, your personal style and that of the opposing team. Tools should help you, rather than distract you from the task at hand.
- Have your bottom line (and BATNA) sorted prior to entering into the negotiation; it reflects badly if you are constantly referring down to your figures.

Strategy

- Do not be afraid to ask the other party what their agenda is, and what they hope to achieve. This may be necessary if you wish to pursue the interest-based approach.
- There is an option to take time outs for a reason – use them to your advantage. Time outs can be an effective way to gather your thoughts, formulate a winning strategy, or find your feet if you feel the negotiation is not going as planned.

Presentation

- Be professional. Greet the other side, and introduce yourselves and who you're representing. Use professional terms.
- Dress for success! Business attire at all times.