

# NEGOTIATION



**Melbourne University**

**Law Students' Society**

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## **WELCOME**

It is our great pleasure to be running the LSS Clayton Utz Negotiation Competition in 2018 alongside Competition Directors Karan and Ken. We hope that the competition will develop your negotiation by challenging you intellectually and encouraging you to think quickly and creatively. You will also learn to work effectively with your teammate as you strive to meet your client's needs. Being a good negotiator is important in any career that you may find yourself in, as well as in a host of day to day situations.

The competition is run as a series of negotiation sessions between teams of lawyers, each representing an opposing party. The aim is to come to an agreement with the opposing team that fulfils your client's interests while considering the unique facts and relationships that govern the particular scenario.

We thank our sponsor, Clayton Utz, for their support and encouragement in making this an exciting and valuable competition in 2018.

We look forward to meeting with all teams this year and wish you the best of luck for the competition!

**Alice Sawers and Panagiota Houpis**

2018 Negotiation Officers

<[melbunilssnegotiation@gmail.com](mailto:melbunilssnegotiation@gmail.com)>

## COMPETITION FORMAT

- 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. Round 1 will be conducted as a seeding round. From Round 2, teams will be eliminated 'knockout' style.
- Teams will receive their brief at **1PM on the day prior to their negotiation**. All teams will receive a common set of facts setting out the background for the scenario. Additionally, each team will be given confidential instructions from their client that is known only to their side. Teams are expected to read over the briefing and devise a strategy to come to the best deal. 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.

### On the Day

- Teams are to present themselves to the LSS Office at least 10 minutes before the start of their negotiations.
- The negotiation session goes for **40 minutes**.
- One, two, or three judges may be present to mark your performance.
- Teams must begin the negotiation by introducing themselves to the other team and stating which client they are representing.
- Each team may take two 2-minute time-outs during the negotiation. No time-outs may be taken inside the final 5 minutes. Teams are expected to keep track their own time outs and must not to rely on judges to call them back in to the negotiation room.
- Judges will notify teams when there are five minutes remaining. It is strongly recommended that at this time any agreed upon issues are put in to writing. If the judge is not clear on what agreement has been made they may consider there to be no agreement.

- Once the negotiation is over, the judge will speak with each team privately to confirm and clarify aspects of the negotiation, and to receive individualised feedback. Team reflections are not scored. Examples of what may be discussed include, but are not limited to:
  - Interpretation of the client's instructions;
  - Team strategies;
  - Relationship with other team; and
  - Outcome.
- Judges will call both teams into the room, provide overall feedback, and will announce a winner. The decision of the judge is final and cannot be appealed.

## RULES

1. 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. If a team attempts to introduce any law the judge will interrupt the negotiation and may deduct points from the offending team.
2. Any printed materials presented to the other team must be confined to two single-sided A4 sheet of paper with size 12 font. If a team is using printed materials, they must ensure to provide copies for the number of judges present.
3. No electronic devices are permitted to be used other than a calculator and a mobile phone for timing purposes. This includes laptops. Although laptops have been used in previous years, we have found that the presence of laptops in the negotiation room between teams creates a barrier which inhibits a collaborative and interest-based negotiation.
4. Time constraints must be adhered to.
5. If teams wish to swap time slots, they must do so personally via the Negotiations Facebook page. Once confirmed, an email should be sent to the Competition Officers at <[melbunilssnegotiation@gmail.com](mailto:melbunilssnegotiation@gmail.com)>. This must be sent **at least 72 hours** before your time slot in the following format:
  - Subject: [Team Name] time slot swap
  - Current time allocation:
  - Name of team you are switching with:
  - Time slot you are switching into:
6. 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.

- Bearing this in mind, some general knowledge may be introduced. For example, if your client is requesting to be put up in a four-star hotel in the Sydney CBD for a week you might want to find out roughly how much this would cost so that you have something concrete to ask for from the other team. If another team proposes an overhaul of the public transport ticketing system in Melbourne and you had no information about this in your facts, you can still ask them how they intend to avoid another Myki blowout and whether the public will accept the project.
7. Teams must remain courteous and respectful towards each other at all times. Judges have the discretion to deduct points or disqualify teams for disrespectful behaviour.
  8. A judge's decision is final and cannot be appealed. Do not contact a judge to discuss your score. Contacting a judge to dispute your result will lead to instant disqualification. The feedback given by the judges and your score sheets is exhaustive guidance on your performance in the competition.
  9. 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.
  10. There is to be no communication between competitors as to the nature of the confidential instructions until all matches in that round have been completed. Competitors who collude may be expelled from the competition at the discretion of the Competition Officers in consultation with judges.

11. Any complaints must be addressed directly to the Competition Officers at [<melbunilssnegotiation@gmail.com>](mailto:melbunilssnegotiation@gmail.com). If a matter is particularly sensitive, you may contact Panagiota or Alice directly.
  
12. All teams will be emailed a copy of their score sheets, accompanied with judge(s)' feedback, within five business day after each round. Numerical scores will not be disclosed.

## **BEST PRACTICE GUIDE**

### **Approaches to Negotiation**

Two of the most common broad approaches to a negotiation are the positional approach and the interest-based approach. Here we provide a brief summary of the two approaches:

#### **A. 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.

#### **B. 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.

- 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 team 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.
  - If you are negotiating to buy a house it may be wise to employ the interest-based approach. 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.

### **C. Best Alternative to Negotiation Agreement (BATNA)**

If you fail to come to an agreement with the other party, what is your next best option? This is your BATNA.

It is crucial to consider your BATNA as it will help you to work out the worst deal you would 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.

### **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'.

#### **a. 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.

#### **b. 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.

#### **c. Disarming Empathy**

- 'Disarming empathy' is a fancy way of saying 'be nice'. 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.

## **OTHER TIPS**

### **Teamwork**

- Try not to let one person dominate the negotiation. Each team member should contribute equally. Although you may be tempted to allocate different elements of your response between yourself and your teammate, you will score higher in the 'teamwork' section of the criteria if you are both ready to speak to every point.
- Remember that you are working with your teammate for your client, do not contradict what they say or speak over them.

### **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.
- Lean in to the role-playing aspect of the competition, we want to believe you are lawyers from a top-tier firm negotiating multi-million dollar deals. Treat the competition with the requisite seriousness that this entails.

### **Preparation**

- Preparation is very important. Understand the issues and prioritise your client's interests. Think of creative possible solutions that could benefit both parties. Read between the lines.
- It is essential to know the common facts and your client's instructions well.
- Have your BATNA sorted prior to entering into the negotiation; it reflects badly if you are constantly referring down to your figures.

### **Strategy**

- Have each of the issues clear in your mind and how important each one is to your client.

- 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.
- Do not be afraid to of silence. If you need a moment to consider an offer or you are waiting for a response do not feel the need to 'fill the silence'.
- If an issue seems to be dragging on, you might consider moving on and revisiting it later.

### **Presentation**

- Be professional, even if the opposing team members are your best friends. Greet the other side, and introduce yourselves and who you're representing. Use professional terms.
- Dress for success! Business attire at all times.

### **Further Resources**

- Harvard Law School Program on Negotiation Blog: contains strategies, tips and news on negotiation: <<https://www.pon.harvard.edu/blog/>>
- *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.