

CORRS CHAMBERS WESTGARTH NEGOTIATIONS

2024 COMPETITOR GUIDEBOOK



Melbourne University

Law Students' Society

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Welcome

It is our great pleasure to be running the LSS Negotiation Competition in 2024, alongside Competition Director Olivia. We hope that the competition will develop your negotiation skills by challenging your thinking skills and creativity. 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 range of everyday 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 look forward to seeing you negotiate and wish you the best of luck for the competition!

Ashiq Walia & Max Scanlon

Negotiation Competition Officers

negotiation@mulss.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. From and including Round 3, teams will be eliminated 'knockout' style, with some teams possibly continuing to Round 4 as a wildcard after a loss in Round 3.
- 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 of 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 15 minutes** before the start of their negotiations.
- The negotiation session goes for 40 minutes.
- Judge/s will be present in the room to assess your performance based on a standard scoresheet.
- Teams must begin the negotiation by introducing themselves to the other team and stating which client they are representing (*ie. Good evening, my name is Ashiqa and this is my colleague Max. Today we are representing our client Corrs Westgarth Chambers*)
- Each team may take two 2 minute time-outs during the negotiation. No time-outs may be taken inside the final 5 minutes. The time-outs are not included in the 40 minutes.
- The judges will notify teams when there is five minutes remaining. It is strongly recommended that at this time any agreed upon issues are put into writing. If the judges are not clear on what agreement has been made they may consider there to be no agreement.
- Once the negotiation is over, the judges will speak with each team privately to confirm and clarify aspects of the negotiation, and to provide 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;
 - Behaviour during the negotiation; and
 - Outcome.
- The judges will then call both teams into the room, provide overall feedback, and announce a winner. The decision of the judges is final and cannot be appealed.
- The feedback you receive from the judges on the night is often more informative than the scoresheet. If you would like a copy of your scoresheet you may request it via email (negotiation@mulss.com) within 24 hours of competing.

Competition Rules:

- There is to be no communication between teams until the round of rounds have been completed due to the confidential nature of client-specific facts.
- Competitors who collude may be expelled from the competition at the discretion of the Competition Officers in consultation with the judges.
- No law may be introduced into the negotiation other than that provided in the problem. If a team attempts to introduce any law the judges will interrupt the negotiation and may deduct points from the offending team.
- Any documents (such as an agenda) presented to the other team must be confined to two single-sided A4 sheets of paper with size 12 font. Please do not bring pre-written contracts as this can narrow the negotiation, however you can bring an agenda outlining what you want to discuss throughout the negotiation.
- Any agendas must be sent to both the opposition and the judges **60 minutes prior** to the competition.
- You may bring in as little or as much as you like when it comes to printed/handwritten notes. Going overboard on materials may prohibit the negotiation.
- 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 negotiation@mulss.com. This must be sent **at least 48 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:
- Teams must remain courteous and respectful towards each other at all times. There is zero tolerance towards poor behaviour, and judges have the discretion to deduct points or disqualify teams for disrespectful behaviour.
- The judges' 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.

Teams must stay within the facts presented to them. The judges retain the right to exclude external information where they see it as detrimental to the negotiation.

 - 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.
 - If your opponent forfeits from the competition, your team will automatically win.
 - Any complaints must be addressed directly to the Competition Officers at negotiation@mulss.com. If a matter is particularly sensitive you may contact Ashiq or Max directly.

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:

Positional Approach:

- Each party adopts a starting position (exceeding what you actually want) and makes compromises until an agreement is reached.
 - 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.
- 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.

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:

1. The nibble
2. Anchoring
3. '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, apologising 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. The worst that can be said if you ask is no.

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'. 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 and 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 things to keep in mind:

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 or undermine what they say, or speak over them.

Tone

- Assertiveness is better than aggression. However, assertiveness is a double-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, it will ensure that the negotiation runs smoothly and that an agreement is reached in the 40 minutes.
- 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 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. It is good that you keep track of time during the negotiation to ensure all issues are resolved and an agreement is reached.

Presentation

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

Further Resources:

- [Internal Competitions Code of Conduct](#)
- [Internal Competitions Complaint Form](#)
- [Internal Competitions Escalation Pathway & Penalty System](#)
- 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.