



BELL GULLY

Negotiation Techniques

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Introduction

1. Position vs. Interest
2. Shuttle diplomacy
3. Dealing with difficult people
4. Calderbank offers

(1) Position vs. Interest

- Fisher & Ury, “Getting to Yes: Negotiating an agreement without giving in” (1981)
- Crucial difference between position and interests

Focus on interests, not positions (1 of 3)

- **The Problem: Don't bargain over positions**
 - Arguing over positions produces unwise agreements
 - Arguing over positions is inefficient
 - Arguing over positions endangers ongoing relationships
 - Being nice is no answer

Focus on interests, not positions (2 of 3)

- Reconcile interests, not positions
 - Interests define the problem
 - Identify shared and compatible interests
- How do you identify interests?
 - Ask “Why”?
 - Ask “Why not?” about their choice
 - Each side has multiple interests
 - Most powerful interests

Focus on interests, not positions (3 of 3)

- Talking about interests
 - Make your interests come alive
 - Acknowledge their interests
 - Put the problem before your answer
 - Look forward, not back
 - Be concrete but flexible
 - Be hard on the problem, soft on the people

Using interests

- Invent options for mutual gain
 - Brainstorm ideas
 - Broaden your options
 - Look for mutual gain by identifying shared interests
- Insist on using objective criteria
 - Develop objective criteria (fair standards, procedures)
 - Negotiate with objective criteria

(2) Shuttle Diplomacy (1 of 2)

- When is “shuttle diplomacy” used?
 - Escalated conflicts
 - Direct communication counterproductive
 - Grandstanding, point scoring tactics

Shuttle Diplomacy (2 of 2)

- What is “shuttle diplomacy”?
 - Series of separate, private meetings / caucusing
 - Mediator’s role
- What are the benefits of shuttle diplomacy?
 - Avoids harm
 - Builds trust

(3) Dealing with difficult people

- Ury, “Getting Past No: Negotiating with Difficult People” (1991)
- Five challenges:
 - *His* negative emotions
 - *His* negotiating habits
 - *His* scepticism about the benefits of agreement
 - *His* perceived power
 - *Your* reaction

Step One

- **Don't react: Go to the balcony**
 - Avoid dangers of reacting: strike back, give in, avoid
 - Go to the balcony
 - Keep your eyes on the prize
 - Name the game: stonewalls, attacks and tricks
 - Buy time to think

Step Two

- Disarm them: Step to their side
 - Listen actively
 - Acknowledge the point
 - Agree wherever you can
 - Acknowledge the person
 - Express your views without provoking

Step Three

- **Change the Game: Don't reject, reframe**
 - Change the frame
 - Ask problem-solving questions
 - Reframe tactics
 - Negotiate about the rules of the game

Step Four

- Make it easy to say “Yes”
 - Obstacles to agreement
 - Build a Golden Bridge
 - Involve your opponent
 - Satisfy unmet interests
 - Help your opponent save face
 - Go slow to go fast

Step Five

- Make it hard to say “No”
 - Use power to educate
 - Warn your opponent about the consequences
 - Use your BATNA
 - Keep sharpening your opponent’s choice
 - Forge a lasting agreement
 - Aim for mutual satisfaction, not victory

(4) Calderbank offers (1 of 3)

- What is a Calderbank offer?
 - Settlement offer
 - In writing
 - “Without prejudice save as to costs”
- Employment Court Regulations 2000, reg 68
 - Court may have regard to conduct of parties tending to increase or contain costs including any settlement offer / Calderbank offer

Calderbank offers (2 of 3)

- Rationale / Purpose
 - Limits D's exposure as to costs
 - Effective encouragement to settle
- Requirements
 - Written
 - Terms clear and unambiguous

Calderbank offers (3 of 3)

- Sooner rather than later
 - Make an offer sooner for more impact
 - Give the plaintiff time to consider
- Effect is to shift the risk
 - Discretion



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