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Program of LSCM

NEGOTIATION AND CONTRACT MANAGEMENT (*LSCM3042*)

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CHAPTER ONE
THE NATURE OF NEGOTIATION

Learning Objectives

After successful completion of this chapter, students would be able to:

- ➢ Understand the definition of *negotiation,* the key elements of a negotiation process, and the distinct types of negotiation.
- ➢ Explain the nature of negotiation, and why it is an increasingly important skill for people to possess.
- ➢ Explore how people use negotiation to manage different situations of interdependence that is, that they depend on each other for achieving their goals.
- ➢ Recognize negotiation opportunities and determine whether you should try to capitalize on these opportunities
- ➢ Consider how negotiation fits within the broader perspective of processes for managing conflict.

1.1 Introduction

Negotiation is a process by which two or more parties attempt to resolve their opposing interests.It is a social process by which interdependent people with conflicting interests determine how they are going to allocate resources or work together in the future. It is a social process because people must interact with others to achieve their desired outcomes. This interaction may occur face-to-face, telephonically, by mail or, increasingly, electronically via e-mail, instant messaging, or video conferencing.

We interact with others because we are interdependentwe have something they need or they have something we need. Knowledge, information, skills, abilities, access to important people and, money are a few examples. Interdependence often requires an organized approach in a clever way as well. How we initiate an interaction depends upon the nature of our prior interactions with the other party, and the manner in which we convey information to him or her influences how he or she responds. Cooperation in prior interactions, for instance, begets cooperation in future interactions and, conversely, be gets competition.

1.1 Characteristics of a Negotiation Situation

Negotiation situations have fundamentally the same characteristics, whether they are peace negotiations between countries at war, business negotiations between buyer and seller or labor and management, or an angry guest trying to figure out how to get a hot shower before a critical interview. Those who have written extensively about negotiation argue that there are several characteristics common to all negotiation situations.

1. There are two or more parties: that is, two or more individuals, groups, or organizations. Although people can "negotiate" with themselves - as when someone debates in their head whether to spend a Saturday afternoon studying, playing tennis, or going to the football game we consider negotiation as a process *between* individuals, within groups, and between groups.

2. There is a conflict of needs and desires between two or more parties that is, what one wants is not necessarily what the other one wants and the parties must search for a way to resolve the conflict. E.g. Tom and Harry may face negotiations over vacations, management of their business, budgets, automobiles, and company procedures, among others.

3. The parties negotiate by *choice!* That is, they negotiate because they think they can get a better deal by negotiating than by simply accepting what the other side will voluntarily give them or let them have. Negotiation is largely a voluntary process. We negotiate because we think we can improve our outcome or result, compared with not negotiating or simply accepting what the other side offers. It is a strategy pursued by choice; seldom are we required to negotiate. There are times to negotiate and times not to negotiate.

4. When we negotiate, we expect a "give-and-take" process that is fundamental to our understanding of the word "negotiation." We expect that both sides will modify or move away from their opening statements, requests, or demands. Although both parties may at first argue strenuously for what they want each pushing the other side to move first ultimately both sides will modify their opening position in order to reach an agreement. This movement may be toward the "middle" of their positions, called a compromise.

However, truly creative negotiations may not require compromise; instead the parties may invent a solution that meets the objectives of *all* parties.

5. The parties prefer to negotiate and search for agreement rather than to fight openly, have one side dominate and the other capitulate, permanently break off contact, or take their dispute to a higher authority to resolve it. Negotiation occurs when the parties prefer to invent their own solution for resolving the conflict, when there is no fixed or established set of rules or procedures for how to resolve the conflict, or when they choose to bypass those rules.

6. Successful negotiation involves the management of tangibles (e.g., the price or the terms of agreement) and also the resolution of intangibles. Intangible factors are the underlying psychological motivations that may directly or indirectly influence the parties during a negotiation. Some examples of intangibles are:

(a) The need to "win," beat the other party, or avoid losing to the other party;

(b) The need to look "good," "competent," or "tough" to the people you represent;

(c) The need to defend an important principle or precedent in a negotiation; and

(d) The need to appear "fair," or "honorable" or to protect one's reputation; or

(e) The need to maintain a good relationship with the other party after the negotiation is over, primarily by maintaining trust and reducing uncertainty.

Intangibles are often rooted in personal values and emotions. Intangible factors can have an enormous influence on negotiation processes and outcomes; it is almost impossible to ignore intangibles because they affect our judgment about what is fair, or right, or appropriate in the resolution of the tangibles. For example, an engineering department's head may not want to make purchasing department head angry about the purchasing problem because he needs his/her support in the upcoming budget negotiations, but the engineering department head also doesn't want to look weak to his department's engineers, who expect him to support them. Thus, for the engineering department head, the important intangibles are preserving his relationship with purchasing department head and looking strong and "tough" to his engineers.

1.3 Interdependence

One of the key characteristics of a negotiation situation is that the parties need each other in order to achieve their preferred objectives or outcomes. That is, either they must coordinate with each other to achieve their own objectives, or they choose to work together because the possible outcome is better than they can achieve by working on their own. When the parties depend on each other to achieve their own preferred outcome, they are interdependent.

Most relationships between parties may be characterized in one of three ways: independent, dependent, or interdependent. Independent parties are able to meet their own needs without the help and assistance of others; they can be relatively detached, indifferent, and uninvolved with others. Dependent parties must rely on others for what they need; because they need the help, benevolence, or cooperation of the other, the dependent party must accept and accommodate to that provider's whims and idiosyncrasies. For example, if an employee is totally dependent on an employer for a job and salary, the employee will have to either do the job as instructed or accept the pay offered or go without that job.

Interdependent parties, however, are characterized by interlocking goals—the parties need each other in order to accomplish their objectives, and hence have the potential to influence each other. For instance, in a project management team, no single person could complete a complex project alone; the time limit is usually too short, and no individual has all the skills or knowledge to complete it. For the group to accomplish its goals, each person needs to rely on the other project team members to contribute their time, knowledge, and resources and to synchronize their efforts.

1.4 Mutual Adjustment

When parties are interdependent, they have to find a way to resolve their differences. Both parties can influence the other's outcomes and decisions, and their own outcomes and decisions can be influenced by the other. This mutual adjustment continues throughout the

negotiation as both parties act to influence the other. It is important to recognize that negotiation is a process that transforms over time, and mutual adjustment is one of the key causes of the changes that occur during a negotiation.

E.g. Sara works in Abay bank. Rather than continuing to have her loans be approved late, which means she loses the loan and doesn't qualify for bonus pay, She is thinking about leaving Abay bank and taking a job with Dashen Bank in the next city. Her prospective manager, Muse, thinks Sara is a desirable candidate for the position and is ready to offer her the job. Muse and Sara are now attempting to establish Sara's salary. The job advertisement announced the salary as "competitive." After talking with her husband Abraham and looking at statistics on bank loan officers' pay in the country, and considering her past experience as a loan officer, Sara identified a salary below which she will not work (7,000 Br) and hopes she might get considerably more. But because Dashen Bank has lots of job applicants and is a very desirable employer in the area, Sara has decided not to state her minimally acceptable salary; she suspects that the bank will pay no more than necessary and that her minimum would be accepted quickly.

Moreover, she knows that it would be difficult to raise the level if it should turn out that 7,000 Br was considerably below what Muse would pay. Sara has thought of stating her ideal salary (8,000 Br), but she suspects that Muse will view her as either too aggressive or rude for requesting that much. Muse might refuse to hire her, or even if they agreed on salary, Muse would have formed an impression of Sara as a person with an inflated sense of her own worth and capabilities.

Let's take a closer look at what is happening here. Sara is making her decision about an opening salary request based in part on what bank loan officers are paid in the area, but also very much on how she anticipates Muse will react to her negotiating tactics. Sara recognizes that her actions will affect Muse. Sara also recognizes that the way Muse acts toward her in the future will be influenced by the way her actions affect him now. As a result, She is assessing the indirect impact of her behavior on herself. Further, she also knows that Muse is probably alert to this and will look upon any statement by Sara as

reflecting a preliminary position on salary rather than a final one. To counter this expected view, Sara will try to find some way to state a proposed salary that is higher than her minimum, but lower than her "dream" salary offer. She is choosing among opening requests with a thought not only to how they will affect Muse but also to how they will lead Muse to act toward Sara. Further, if she really thought about it, Sara might imagine that Muse believes she will act in this way and makes her decision on the basis of this belief.

Two Dilemmas in Mutual Adjustment

Deciding how to use concessions as signals to the other side and attempting to read the signals in the other's concessions are not easy tasks, especially when there is little trust between negotiators. Two of the dilemmas that all negotiators face, identified by Harold Kelley (1966), help explain why this is the case. The first dilemma, **the *dilemma of honesty*,** concerns how much of the truth to tell the other party. On the one hand, telling the other party everything about your situation may give that person the opportunity to take advantage of you. On the other hand, not telling the other person anything about your needs and desires may lead to a stalemate. Just how much of the truth should you tell the other party? If Sara told Muse that she would work for as little as 7,000 Br but would like to start at 8,000 Br, it is quite possible that Muse would hire her for 7,000 Br. If, however, Sara did not tell Muse any information about her salary aspirations, then Muse would have a difficult time knowing Sara's aspirations and what she would consider an attractive offer. He might make an offer based on the salary of the last person he hired, or claim "bank policy" for hiring at her experience level, and wait for her reaction to determine what to say next.

Kelley's second dilemma is **the dilemma of trust***:* How much should negotiators believe what the other party tells them? If you believe everything the other party says, then he or she could take advantage of you. If you believe nothing that the other party says, then you will have a great deal of difficulty in reaching an agreement. How much you should trust the other party depends on many factors, including the reputation of the other party, how he or she treated you in the past, and a clear understanding of the pressures on the other in

the present circumstances. For example, if Muse told Sara that 6,500 Br was the maximum he was allowed to pay her for the job without seeking approval "from the Head office," should Sara believe him or not? As you can see, sharing and clarifying information is not as easy as it first appears.

The search for an optimal solution through the processes of giving information and making concessions is greatly aided by trust and a belief that you're being treated honestly and fairly. Two efforts in negotiation help to create such trust and beliefs—one is based on perceptions of outcomes and the other on perceptions of the process. Outcome perceptions can be shaped by managing how the receiver views the proposed result. If Muse convinces Sara that a lower salary for the job is relatively unimportant given the high potential for promotion associated with the position and the very generous bonus policy, then Sara may feel more comfortable accepting a lower salary. Perceptions of the trustworthiness and credibility of the process can be enhanced by conveying images that signal fairness and reciprocity in proposals and concessions. When one party makes several proposals that are rejected by the other party and the other party offers no proposal, the first party may feel improperly treated and may break off negotiations. When people make a concession, they trust the other party and the process far more if a concession is returned. In fact, the belief that concessions will occur during negotiations appears to be almost universal.

1.5 Value Claiming and Value Creation

Earlier, we identified two types of interdependent situations—zero-sum and non-zero-sum. Zero-sum or *distributive situations* are ones in which there can be only one winner or where the parties are attempting to get the larger share or piece of a fixed resource, such as an amount of raw material, money, time, and the like. In contrast, non-zero-sum or *integrative or mutual gains situations* are ones in which many people can achieve their goals and objectives.

The structure of the interdependence shapes the strategies and tactics that negotiators employ. In distributive situations, negotiators are motivated to win the competition and beat the other party or to gain the largest piece of the fixed resource that they can. To

achieve these objectives, negotiators usually employ win–lose strategies and tactics. This approach to negotiation—called *distributive bargaining* —accepts the fact that there can only be one winner given the situation and pursues a course of action to be that winner. The purpose of the negotiation is to *claim value* —that is, to do whatever is necessary to claim the reward, gain the lion's share of the prize, or gain the largest piece possible. An example of this type of negotiation is purchasing a used car or buying a used refrigerator at a yard sale. We fully explore the strategy and tactics of distributive bargaining, or processes of claiming value.

In contrast, in integrative situations the negotiators should employ win–win strategies and tactics. This approach to negotiation—called *integrative negotiation* —attempts to find solutions so both parties can do well and achieve their goals. The purpose of the negotiation is to create value—that is, to find a way for all parties to meet their objectives, either by identifying more resources or finding unique ways to share and coordinate the use of existing resources. An example of this type of negotiation might be planning a wedding so that the bride, groom, and both families are happy and satisfied, and the guests have a wonderful time. We fully explore the strategy and tactics of integrative, value-creating negotiations in Chapter 4.

It would be simple and elegant if we could classify all negotiation problems into one of these two types and indicate which strategy and tactics are appropriate for each problem. Unfortunately, *most actual negotiations are a combination of claiming and creating value processes*. The implications for this are significant:

1. *Negotiators must be able to recognize situations that require more of one approach than the other:* those that require predominantly distributive strategy and tactics, and those that require integrative strategy and tactics. Generally, distributive bargaining is most appropriate when time and resources are limited, when the other is likely to be competitive, and when there is no likelihood of future interaction with the other party. Most other situations should be approached with an integrative strategy.

2. *Negotiators must be versatile in their comfort and use of both major strategic approaches.* Not only must negotiators be able to recognize which strategy is most appropriate, but they must be able to employ both approaches with equal versatility. There

is no single "best," "preferred," or "right" way to negotiate; the choice of negotiation strategy requires adaptation to the situation, as we will explain more fully in the next section on conflict. Moreover, if most negotiation issues or problems have components of both claiming and creating values, then negotiators must be able to use both approaches in the same deliberation.

Negotiator perceptions of situations tend to be biased toward seeing problems as more distributive/competitive than they really are. Accurately perceiving the nature of the interdependence between the parties is critical for successful negotiation. Unfortunately, most negotiators do not accurately perceive these situations. People bring baggage with them to a negotiation: past experience, personality, moods, assumptions about the other party, and beliefs about how to negotiate. These elements dramatically shape how people perceive an interdependent situation, and these perceptions have a strong effect on the subsequent negotiation. Moreover, research has shown that people are prone to several systematic biases in the way they perceive and judge interdependent situations. The important point here is that the predominant bias is to see interdependent situations as more distributive or competitive than they really are. As a result, there is a tendency to assume a negotiation problem is more zero-sum than it may be and to *overuse* distributive strategies for solving the problem. As a consequence, negotiators often leave unclaimed value at the end of their negotiations because they failed to recognize opportunities for creating value.

The tendency for negotiators to see the world as more competitive and distributive than it is, and to underuse integrative, creating-value processes, suggests that many negotiations yield suboptimal outcomes. This does not need to be the case. At the most fundamental level, successful coordination of interdependence has the potential to lead to synergy, which is the notion that "the whole is greater than the sum of its parts." There are numerous examples of synergy. In the business world, many research and development joint ventures are designed to bring together experts from different industries, disciplines, or problem orientations to maximize their innovative potential beyond what each company can do individually.

Value may be created in numerous ways, and the heart of the process lies in exploiting the differences that exist between the negotiators. The key differences among negotiators include these:

1. Differences in interests. Negotiators seldom value all items in a negotiation equally. For instance, in discussing a compensation package, a company may be more willing to concede on the amount of a signing bonus than on salary because the bonus occurs only in the first year, while salary is a permanent expense. An advertising company may be quite willing to bend on creative control of a project, but very protective of control over advertising placement. Finding compatibility in different interests is often the key to unlocking the puzzle of value creation.

2. Differences in judgments about the future. People differ in their evaluation of what something is worth or the future value of an item. For instance, is that piece of swamp land a valuable wetland to preserve, or a bug-infested flood control problem near a housing development, or a swamp that needs to be drained to build a shopping center? How parties see the present and what is possible that needs to be created—or avoided—can create opportunities for the parties to get together.

Differences in risk tolerance: People differ in the amount of risk they are comfortable assuming. A young, single-income family with three children can probably sustain less risk than mature, dual-income couples near retirement. A company with a cash flow problem can assume less risk of expanding its operations than one that is cash-rich.

Differences in time preference:Negotiators frequently differ in how time affects them. One negotiator may want to realize gains now while the other may be happy to defer gains into the future; one needs a quick settlement while the other has no need for any change in the status quo. Differences in time preferences have the potential to create value in a negotiation. For instance, a car salesman may want to close a deal by the end of the month in order to be eligible for a special company bonus, while the potential buyer intends to trade his car "sometime in the next six months."

1.6 Conflict and conflict management

Conflict :-

As we have been discussing, a potential consequence of interdependent relationships is conflict. Conflict can result from the strongly divergent needs of the two parties or from misperceptions and misunderstandings. Conflict can occur when the two parties are working toward the same goal and generally want the same outcome or when both parties want very different outcomes. Regardless of the cause of the conflict, negotiation can play an important role in resolving it effectively. Conflict may be defined as a "sharp disagreement or opposition, as of interests, ideas, etc." and includes "the perceived divergence of interest or a belief that the parties' current aspirations cannot be achieved simultaneously.

Levels of Conflict

One way to understand conflict is to distinguish it by level. Four levels of conflict are commonly identified:

1. **Intrapersonal or intra-psychic conflict**. These conflicts occur within an individual. Sources of conflict can include ideas, thoughts, emotions, values, predispositions, or drives that are in conflict with each other. We want an ice cream cone badly, but we know that ice cream is very fattening. We are angry at our boss, but we're afraid to express that anger because the boss might fire us for being insubordinate.

2. **Interpersonal conflict**. A second major level of conflict is between individuals. Interpersonal conflict occurs between co-workers, spouses, siblings, roommates, or neighbors.

3. **Intra-group conflict**. A third major level of conflict is within a group among team and work group members and within families, classes, living units, and tribes. At the intra-group level, we analyze conflict as it affects the ability of the group to make decisions, work productively, resolve its differences, and continue to achieve its goals effectively.

4. **Intergroup conflict**. The final level of conflict is intergroup between organizations, ethnic groups, warring nations, or feuding families or within splintered, fragmented

communities. At this level, conflict is quite intricate because of the large number of people involved and the multitudinous ways they can interact with each other.

Conflict Management

Many frameworks for managing conflict have been suggested, and inventories have beenconstructed to measure negotiator tendencies to use these approaches. Each approach begins with a similar two-dimensional framework and then applies different labels and descriptions to five key points. We will describe these points using the framework proposed.

The two-dimensional framework presented in Figure 1.1 below is called the dual concerns model. The model postulates that people in conflict have two independent types of concern: concern about their own outcomes (shown on the horizontal dimension of the figure) and concern about the other's outcomes (shown on the vertical dimension of the figure).
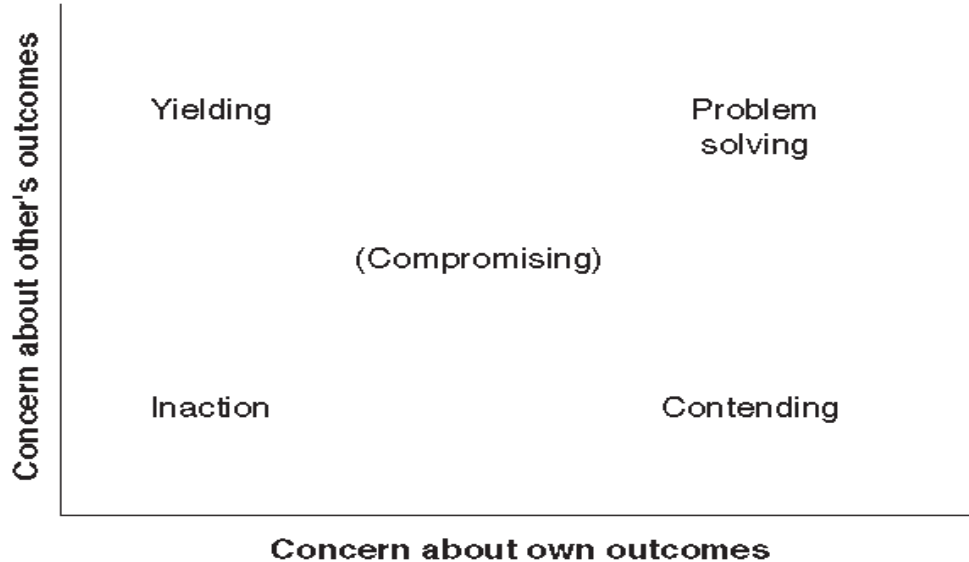

Fig. 1.1: The Dual Concerns Model

These concerns can be represented at any point from none (representing very low concern) to high (representing very high concern). The vertical dimension is often referred to as the cooperativeness dimension, and the horizontal dimension as the assertiveness dimension.

The stronger their concern for their own outcomes, the more likely people will be to pursue strategies located on the right side of the figure, whereas the weaker their concern for their own outcomes, the more likely they will be to pursue strategies located on the left side of the figure. Similarly, the stronger their concern for permitting, encouraging, or even helping the other party achieve his or her outcomes, the more likely people will be to pursue strategies located at the top of the figure, while the weaker their concern for the other party's outcomes, the more likely they will be to pursue strategies located at the bottom of the figure.

Although we can theoretically identify an almost infinite number of points within the two-dimensional space based on the level of concern for pursuing one's own and the other's outcomes, five major strategies for conflict management have been commonly identified in the dual concerns model:

1. **Contending (also called competing or dominating)** is the strategy in the lower right hand corner. Actors pursuing the contending strategy pursue their own outcomes strongly and show little concern for whether the other party obtains his or her desired outcomes. As Pruitt and Rubin (1986) state, parties who employ this strategy maintain their own aspirations and try to persuade the other party to yield. Threats, punishment, intimidation, and unilateral action are consistent with a contending approach

2. **Yielding (also called accommodating or obliging)** is the strategy in the upper left hand corner. Actors pursuing the yielding strategy show little interest or concern in whether they attain their own outcomes, but they are quite interested in whether the other party attains his or her outcomes. Yielding involves lowering one's own aspirations to "let the other win" and gain what he or she wants.

3. **Inaction (also called avoiding)** is the strategy in the lower left-hand corner. Actors pursuing the inaction strategy show little interest in whether they attain their own outcomes, as well as little concern about whether the other party obtains his or her outcomes. Inaction is often synonymous with withdrawal or passivity; the party prefers to retreat, be silent, or do nothing.

4. **Problem solving (also called collaborating or integrating)** is the strategy in the upper right-hand corner. Actors pursuing the problem-solving strategy show high

concern for attaining their own outcomes and high concern for whether the other party attains his or her outcomes. In problem solving, the two parties actively pursue approaches to maximize their joint outcome from the conflict.

5. **Compromising** is the strategy located in the middle of Figure 1.1. As a conflict management strategy, it represents a moderate effort to pursue one's own outcomes and a moderate effort to help the other party achieve his or her outcomes. Pruitt and Rubin (1986) do not identify compromising as a viable strategy; they see it "as arising from one of two sources—either lazy problem solving involving a half-hearted attempt to satisfy the two parties' interests, or simple yielding by both parties". However, because many other scholars who use versions of this model believe that compromising represents a valid strategic approach to conflict, rather than as laziness or a cop-out.

Review questions

True or False

1. Most workers are too nervous to negotiate for more responsibility, their own staff, a higher salary, or to transfer to a new location.

2. The best negotiation strategy is to avoid compromise at all costs. Remember, the famous saying is "winner takes all."

3. Negotiating is a long-term process, not a one-time event.

4. You should be able to anticipate everything that is discussed in your annual performance review, and how people will evaluate the job you're doing.

5. When asking your manager for more responsibility, a raise or a promotion, the most important thing to discuss is why you deserve it.

Answer the following questions

1. List and elaborate the characteristics of a negotiation situation?

2. Usually dependant negotiators have less bargaining power that interdependent negotiator. How it could be

3. What is the main cause for the party to negotiate?

4. Compare and contrast value claiming and value creation

5. Define conflict and describe its merits and demerits

Self Check

No	Do students grasp Objectives / Competencies	Yes	No
1	Do you understand the definition of negotiation, the key elements of a negotiation process?		
2	Can you explain the nature of negotiation, and why it is an increasingly important skill for people to possess?		
3	Have you understand how people use negotiation to manage different situations of interdependence?		
4	Have you recognize negotiation opportunities and determine whether you should try to capitalize on these opportunities		

CHAPTER TWO
NEGOTIATION: STRATEGIZING, FRAMING, AND PLANNING

Learning Objectives

After successful completion of this chapter, students would be able to:

- ➢ Understand goals of negotiation – the objectives that drive a negotiation strategy.
- ➢ Recognize negotiation strategy – the overall plan to achieve one's goals.
- ➢ Comprehend the flow of negotiations: stages and phases.
- ➢ Implement the strategy: the planning process.

2.1 Goals of negotiation-The objectives that drive a Negotiation Strategy

The first step in developing and executing a negotiation strategy is to determine one's goals. Negotiators must anticipate (make plan) goals they want to achieve in a negotiation and focus on how to achieve those goals. Negotiators may consider substantive goals (e.g., money or a specific outcome), intangible goals (e.g., winning, beating the other party, or getting a settlement at any cost), and procedural goals (e.g., shaping the agenda or simply having a voice at the table). Effective preparation requires a thorough, thoughtful approach to these goals; negotiators should specify their goals and objectives clearly. This includes listing all goals they wish to achieve in the negotiation, determining the priority among these goals, identifying potential multigoal packages, and evaluating possible trade-offs among multiple goals.

The preparation must include attention to substantive (no time being) items including goals priorities, and multi goal packages as well as to procedural concern dealing with agendas and bargain histories. Effective preparation requires a trough, thoughtful approach to these items; negotiator should specify their goals and objectives clearly. This includes stating all goals they wish to achieve in the negotiation, determining the priority among these goals, identifying potentially multi goal packages and evaluating possible tradeoff among them.

The preparation must include attention to substantive items including goals, goal priorities, and multi goal packages.

1. Procedural concerns dealing with agendas and bargaining histories.
2. Effective preparation requires a through, thoughtful approach to these items: negotiators should specify their goals and objectives clearly.

A. **Direct effects of goals on choice of strategy**.

When entering a bargaining relationship, people generally have some idea of what they would like the outcome to be they often say I 'didn't be happy if and then state something they would really like to have, for example," I could buy new car at a price that wouldn't require all of my pay check as the loan payment that's not bad as a wish, but is not very good as a goal for negotiation. Four aspects of how goals affect negotiation are important to understand:

1. Wishes are not goals especially in negotiation. Wishes may be related to interests or needs that motivate goals, but they are not goals them-selves. A wish is a fantasy, a hope that something might happen; a goal is a specific, focused realistic target that one can specifically plan to achieve.

2. Our goals often linked to other party's goals. The linkage between the two part's goals defines an issue to be settled. My goal is to get a car cheaply and the dealer's goal is to sell it at the highest possible price (and profit); thus, "issues" is the price I will pay for the car. If I could achieve my goal by myself, without the other party I probably wouldn't need to negotiate. Goals that are not linked to each other often lead the parties either to talk past each other or to intensify the conflict.

3. There are boundaries or limits to what our goals can be (see the discussion of alternatives later in this chapter). If what we want exceeds these limits (i.e., what the other party is capable of or willing to give), we must either change our goals or end the negotiation goals must be reasonably attainable. If my goal "to buy this car at a cheap price "is not possible because the dealer won't sell the car cheaply, I'm going to either change my goal or find a cheaper car to buy (per-haps from a different dealer).

4. Effective goals must be concrete or specific, and preferably measurable. The less concrete and measurable our goals are, the harder it is (a) to communicate to the other party what we want, (b) to understand what he or she wants , and (c) to determine whether any particular outcome satisfies our goals. "to get a price on a car so that the loan payment does not use all of my paycheck" is not a very clear goal. Is this every week's paycheck or only one check a month? Do I won't the payment to be just under 100 percent of the paycheck, or about 50 percent, or perhaps even 25 percent?

The goals discussed in the preceding paragraph are all quite tangible, and they address directly the questions of the purchase price and the buyer's cash flow. No less important are the many intangible goals that typically arise in any negotiations. In the example of the car purchase, intangible goals might include the following : to enhance one's reputation among one's friends by owing and driving an expensive, power full car : to maintain one's friends image of oneself as a she rowed, pennywise negotiator: or to pay any price to ensure convent, reliable transportation , in other negotiation reputations, intangible goals might include: to mention reputation as a tough but principled negotiator, to establish a precedent for future negotiations, or to conduct the negotiations in a manner that is fair to all sides and assures earth party fair treatment.

Indirect Effects of Goals on Choice of Strategy

Simple and direct goals can often be attained in a single negotiation session and with a simple negotiating strategy. As a result, we often limit our view on the impact of pursuing short-term goals, particularly when the impact is long term. This short-term thinking affects our choice of strategy; in developing and framing our goals, we may ignore the present or future relationship with the other party in favor of a simplistic concern for achieving only the substantive outcome.

As only one example, suppose your beloved aging grandmother decides she is too old to drive and asks you whether you want to buy her car. She says she knows nothing about cars and simply wants to sell it to you because she trusts you to take care of it. You buy it, and

then realize that while it was a great deal, it is a huge gas guzzler that is costing you way too much a week in gas money. You realize your actual goal was "a fuel-efficient affordable car," not just "any affordable car."

Other negotiation goals those that are complex or difficult to define may require initiating a sequence of negotiations episodes. In these cases progress will be made incrementally, and may depend on establishing a strong relationship with the other party . examples here include a substantial increase in one's line of credit with a bank or credit union, or the establishment of a privileged status with an important trading partner, such relationship –oriented goals should motive the negotiations toward a strategy choice in which the relationship with the other party is valued as much as (or even more than) the substantive outcome/ thus, relational goals tend to support the choice of a collaborative or integrative strategy.

2.2 Strategy-the overall plan to achieve one's goals

After negotiations articulate goals, they move to the second element in the sequence: selecting and developing a strategy. Henry Mintzberg and j. Brian Quinn (1991), experts on business strategy, as "the pattern or plan that integrate an organizations' major targets, policies, and action sequences in to a cohesive whole," Applied to negotiations, strategy refers to the overall plan to accomplish one's goals in a negotiations, and the action sequences that will lead to the accomplishment of those goals.

Strategy, Tactics, or Planning

How are strategy and tactics related? Although the line between strategy and tactics may seem indistinct, one major difference is that of scale, perspective, or immediacy. Tactics are short-term, adaptive moves designed to enact or pursue broad (or higher-level) strategies, which in turn provide stability, continuity, and direction for tactical behaviors. For example , your negotiation strategy might be integrative, destined to build and maintain a productive relationship with the other party while using a joint problem – solving approach to the issues. In pursuing this strategy, appropriate tactics include describing your interests, using open-ended questions and active listening to understand the

others' interests, and inventing options for mutual gain. Tactics are subordinate to strategy; they are structured, directed, and driven by strategic considerations.

How strategy and planning are related? Planning is an integral part of the strategy process the "action" component. the planning process takes in all the considerations and choices that parties in a negotiation make about tactics, resource use, to use, and contingent responses in pursuit of the overall strategy – how they plan to proceed, to use what they have to get what they want, subject to their strategic guidelines.

Strategic options --- vehicles for Achieving Goals

In the strictest sense, a unilateral choice of strategy would be wholly one-sided and intentionally ignorant of any information about the other negotiator. In our use of the term, however, a unilateral choice is one that is made without the active involvement of the other party. A reasonable effort to gain information about the other party and to incorporate that information in to the choice of a negotiation strategy is always use full. In chapter 1, the dual concerns modal was used to describe the basic orientation that people take toward conflict. This modal proposes that individuals in conflict have two levels of related concern : a level of concern for their own outcomes, and a level of concern for the other's outcomes (refer back to figure 1.3). According to this modal, a negotiator's unilateral choice of strategy is reflected in the answers to two simple questions1) how much concern does the actor have for achieving the substantive outcomes at stake in this negotiation.

Fig. 1.3 the dual concern modal

Substantive outcome Important

Yes   No

Collaboration	accommodation

21

	Competition	Avoidance	
			Yes

Relational

Outcome   No
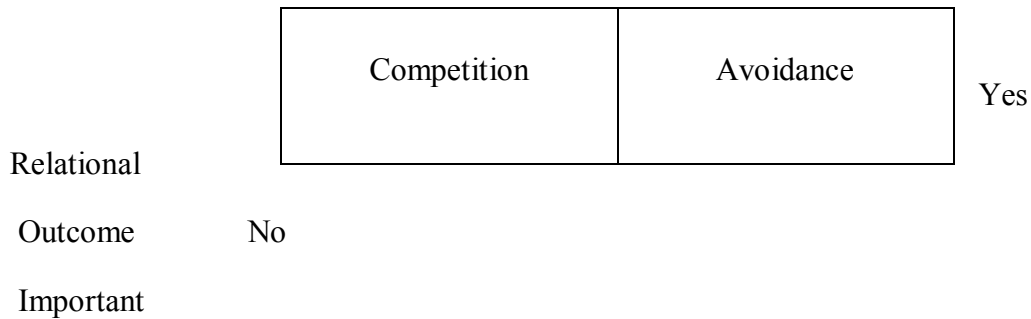
Important

Alternative situational strategies: The power of this modal lies in requiring the negotiator to determine the relative importance and priority of the two dimension in the desired settlement. As figure 2.2 shows. Answers to these two simple questions suggest at least four types of initial strategies for negotiators : competition, collaboration, accommodation, and avoidance. A strong interest in achieving only substantive outcomes getting this deal, inning this negotiation, with little or no regard for the effect on the relationship or on subsequent exchanges with the other party tends to support a competitive (distributive) strategy. A strong interest in achieving only the relationship outcomes building, preserving, or enhancing a good relationship with the other party suggests an accommodation strategy. If both substance and relationship are important, the negotiator should pursue a collaborative (integrative) strategy. Finally, if achieving neither substantive outcomes nor an enhanced relationship is important, the party might be best served by avoiding negotiation. Each of these different, strategic approaches also has different implications for negotiation planning and preparation. Avoidance and accommodation strategies are discussed below: competitive (distributive) and collaborative (integrative) strategies will be extensively addressed in chapters 3.

2.3. Defining the Issue-The Process of "Framing" the Problem

Framing has become a popular concept among social scientists who study cognitive processes, decision making, persuasion, and communication. The popularity of framing has come with the recognition that often two or more people who are involved in the same situation or in a complex problem see it or define it in different way. Researchers link frames and experience as follows:

Disputes, like other social situations, are ambiguous and subject to interpretation. People can encounter the same dispute and perceive it in very different ways as a result of their backgrounds, professional training or past experiences. One label that has been placed on this form of individualized definition of a station based on an interplay of past experiences and acknowledge, and the existing situation, is a "frame".

Another view of frames is that of noted management theorist Mary Parker Follett (1942; Kolb, 1995), who was one of the first to write about integrative (Win-Win) negotiation in organizations. In describing the process by which parties with different views about an issues arrive at a joint agreement, Follett suggests that the parties achieve some form of Unit, "Not from giving in [compromise] but from 'getting the desire of each side into one field of vision'" Thus, frames emerge as the parties talk about their preferences and priorities; they allow the parties to begin to develop a shared or common definition n of the issues related to a situation, and a process for resolving for them.

2.3.1 Why Frames are critical to Understanding strategy

While researchers have only begun to study frames and framing dynamic in depth, there is general agreement that people often use frames to define problems and that the effect of frames can be identified as we observe negotiations. Whether a frame is "a conception of the acts, outcomes and contingencies associated with a particular choice, " an individualized definition of a situation, "or a field of vision," how parties frames and define a negotiating issues or problem is a clear and strong reflection of what they define as central and critical to negotiating objectives, what their expectations and preferences are for certain and critical to negotiating objectives, what their expectations and preference are for certain possible outcomes, what information they seek and use to argue their case, the procedures they use to try to present their case, and the manner in which they evaluate the outcomes actually achieved frames are inevitable; one cannot "Avoid "framing.

Note that frames themselves cannot be "seen". They are abstractions, perceptions, and thoughts that people use to define a situation, organize information, determine what is important, what is not, and so on. We can infer other people's frames by asking them directly about their frames, by listening to their communication, and by watching their

behavior. Similarly, we can try to understand our own frames, by thinking about what aspects of a situation we should pay attention to, emphasize, focus on, or ignore- and by observing our own words and actions. One cannot see or directly measure a frame, however.

By choosing to define and articulate an aspect of a complex social situation, one has already implicitly "chosen" to use certain frames and to ignore others. This process often occurs without any real intentionality on the part of the negotiator; one can frame a problem because of deeply buried past experiences, deep-seated attitude and values, or strong emotions. Frames can also be shaped by the type of information that is chosen, or the setting and context in which the information is presented. Understanding framing dynamic s helps negotiators to elevate the framing process to one that is more conscious and more under control than it would otherwise be; negotiators who understand how they are framing a problem may be able to understand more completely what they are doing, what the other party is doing, and how to have more control over the negotiation process. Finally, both current theory and stream of supportive empirical researcher shows that frames may be malleable and if so, can be shaped or reshaped spectate, frames as issues development). The approach here is to introduce the negotiator to the power and prevalence of frames, such that he or she can understand.

- Different types of frames.
- How certain frames may be invoked or ignored in a given situation.
- The consequence of framing a conflict in a particular way
- Approaches that negotiators can use to manage frames more effectively

2.3.2. Types of Frames

Several researchers have studied different types of frames in different contexts. One area where framing has been extensively studied is environmental disputes. These works explore different frames that parties use the disputes. Examples include:

1. Substantive what the conflict is about. Parties taking a substantive frame have a particular disposition about the key issue or concern in the conflict.

2. Outcome what predispositions the party has to achieving a specific result or outcome from the negotiation. To the degree that a negotiator has a specific, preferred outcome he or she wants to achieve, the dominant frame may be to focus all strategy, tactics, and communication toward getting that outcome. Parties who have a strong outcome frame are more likely to engage primarily in distributive (win-lose or lose-lose) negotiations than in other types of negotiations.

3. Aspiration: what predispositions the party has toward satisfying a broader set of interests or needs in negotiation. Rather than focusing on a specific outcome, the negotiator tries to ensure that his or her basic interests, needs, and concerns are met. Parties who have a strong aspiration frame are more likely to be primarily engaged in integrative (win-win) negotiation than in other types.

4. Conflict management process: how the parties will go about resolving their dispute. Negotiators who have a strong process frame are less likely than others to be concerned about the specific negotiation issues but more concerned about how the deliberations will proceed, or how the dispute should be managed. When the major concerns are largely procedural rather than substantive, process frames will be strong.

Both Parties have frames. When the frames match, the parties are more likely to focus on common issues and a common definition of the situation; when they do not match, communication between the parties is likely to be difficult and incomplete. Negotiator who are communicating from different frames should first recognize that they may be talking "past each other ," raise the issues with each other ,and have one or both parties reframe their dialogue so that they are affectively communicating "on the same wavelength."

Frames are probably controllable, at least to some degree. If negotiators understand what frame they are operating from, and what frame the other party is operating from, they may be able to shift conversation toward the frame they would like to have the other espouse.

Conversation change and transform frames in ways negotiators may not be able to predict but may be able to control. As parties discuss an issue, introduce arguments and evidence, and advocate a course of action, the conversation changes, and the frames of problem may

change as well. It will be critical for negotiators to track this shift and understand where it might lead.

Certain frames are probably more likely than other to lead to certain types of processes and outcomes. All of the possible combinations are beyond the scope of this review .But, for example, parties who are competitive are likely to have positive identity frames of themselves, negative characterization frame of each other, and preference for more win-lose processes of resolving their dispute. Recognizing these biases may empower the parties to be able to frame their views of themselves, the other, or the dispute resolution mechanism in order to pursue a process that will resolve the conflict more productively.

Understanding frames- which mean understanding how parties define the key issues and how conversations can shift and transform those issues the first step in effective planning.

1. Tactics are short-term, adaptive moves designed to enact or pursue broad (or higher-level) strategies, which in turn provide stability, continuity, and direction for tactical behaviors.
2. Tactics are subordinate to strategy: they are structured, directed, and driven by strategic considerations.
3. The planning process takes in all the considerations and choices that parties in a negotiation make about tactics, resource use, and contingent responses in pursuit of the overall strategy.

2.4. Getting ready to implement the strategy: The planning process

On the surface, when one watches the drama and theatrics of tense, conflict-and success lies in persuasiveness, eloquence, clever maneuvering, and occasional histrionics. Although these tactics make the process interesting (and at times even entertaining), the foundation for success in negotiation is not in the game playing or the dramatic. The foundation for success in negotiation is not in the game playing or the dramatics. We argue that the primary determinant for success in negotiation is in the planning that takes

place prior to the dialogue. Effective planning requires hard work through considering the following points:

1. Defining the negotiating goal.
2. Defining the major issues related to achieving the goal
3. Assembling the issues, ranking their importance, and defining the bargaining mix.
4. Defining the interests.
5. Knowing your alternatives (BATNAs).
6. Knowing your limits, including a resistance point.
7. Analyzing and understanding the other party's goals, issues, and resistance points.
8. Setting one's own targets and opening bids.
9. Assessing the social context of negotiation (for example, who is at the table, who is not at the table but has a strong interest in the negotiation outcomes, and who is observing and critiquing the negotiation).
10. Presenting the issues to the other party: substance and process.

Although we have highlighted the differences between the two (and will do so more extensively in the next two chapters) , we believe that with the exception of the specific tactics negotiators intend to use, one comprehensive planning process can be used for either form of negotiators. We also assume that planning process can proceed linearly, in the order in which these steps are presented. Information often cannot be obtained and accumulated quit this simply and straightforwardly, however, and information discovered in some of the later step may forces a negotiator to reconsider and reevaluate earlier steps. As result, the first iteration through the planning process should be tentative, and the negotiator should be flexible enough to modify and adjust previous step as new information becomes available.

1. Defining the Issues

The first step in negotiation planning is to define the issues to be discussed. This step itself usually begins with an analysis of the overall situation. Usually, a negotiation involves one or two major issues (e.g., price or rate) and several minor issues. For example:

Negotiation planning Guide

➢ What are the issues in the upcoming negotiation?

➢ Based on a review of ALL of the issues, what is the "bargaining mix"? (Which issues do we have to cover? Which issues are connected to other issues?

➢ What are my interests?

➢ What are my limits ----- what is my walk away? What is my alternative?

➢ Defining targets and openings----- where will I start, what is my goal?

➢ Who are my constituents and what do they want me to do?

➢ What are the opposing negotiators and what do they want?

➢ What overall strategy do I want to select?

➢ How will I present my issues to other party

➢ What protocol needs to be followed in conducting this negotiation?

Negotiation process

Moreover Leonard Greenhalgh suggests that there are seven key steps to an ideal negotiation process:

1. **Preparation:** deciding what is important, defining goals, thinking ahead how to work together with the other party

2. **Relationship building:** getting to know the other party, understanding how you and the other are similar and different, and building commitment toward achieving a mutually beneficial set of outcomes

3. **Information gathering:** learning what you need to know about the issues, about the other party and their needs, about the feasibility of possible settlements, and about what might happen if you fail to reach agreement with the other side.

4. **Information using:** at this stage, negotiators assemble the case they want to make for their preferred outcomes and settlement, one that will maximize the negotiator's own needs

5. **Bidding:** the process of making moves from one's initial, ideal position to the actual outcome

6. **Closing the deal:** the objective here is to build commitment to the agreement achieved in the previous phase.

7. **Implementing the agreement:** determining who needs to do what once hands are shaken and the documents sig.

Review questions

Write true or false and try to justify why you say true or false

1. Negotiation goals are usually tangibles but they can also includes intangibles such as maintaining long term relationships
2. In distributive strategy the primary motive of negotiators are maximize their outcome
3. Unlike integrative negotiation in distributive negotiation the parties know own needs but conceal or misrepresent them; neither party lets the other know real needs
4. Negotiation tactics are subordinate to strategy: they are structured, directed, and driven by strategic considerations.
5. Negotiation position is an opening bid or resistance point where a negotiator wants

Answer the following questions

1. What is the similarity and difference between tactic and strategy?
2. List and explain the steps that the negotiator should use in planning for negotiation
3. What are win- win and win-loss negotiation?

Self Check

No	Do students grasp Objectives / Competencies	Yes	No
1	Do you understand the goals of negotiation – the objectives that drive a negotiation strategy?		
2	Can you explain negotiation strategy – the overall plan to achieve one's goals?		
3	Have you comprehended properly the flow of negotiations: stages and phases?		
4	Do you know the planning process to implement the negotiation strategy?		

CHAPTER THREE

STRATEGY AND TACTICS OF DISTRIBUTIVE BARGAINING

Learning Objectives

After successful completion of this chapter, students would be able to:

➢ Recognize distributive bargaining situations,

➢ Understand the importance of goals and targets, reservation points, and alternatives,

➢ Understand the varied tactical approaches used in distributive situations, and

➢ Recognize and defend them self from hardball tactics used by others.

3.1 The Distributive Bargaining Situation

To describe how the distributive bargaining process works, we will walk through an actual negotiation between the owner of a growing business and a property developer. The central facts of the case are real; however, certain details have been changed for illustrative purposes.

A few years ago, Feben started a small fashion design company out of her basement in a suburb of Tigray. The business had grown substantially and she could no longer continue operating from her home—she needed to find a new location. Her search for a suitable unit was going nowhere when, as luck would have it, she noticed a new business development only a few blocks from her home. She excitedly called the number on the sign and was put in touch with John, the developer of the property. Their initial conversation revealed several things. First, the unit was big enough for Feben's needs, even leaving a bit of room for growth. Second, the unit would be ready for occupancy in about four weeks—just enough time to get organized for the move. And third, the developer was looking to sell the unit, not lease it, which was exactly what Feben had in mind. With these issues cleared up over the phone, Feben and John agreed to meet in person the next day to discuss the possible sale of the unit.

Notice the distributive nature of the upcoming meeting between Feben and John. Feben wishes to pay as little as possible for the property while John hopes she will pay a large sum. Thus, it appears to be a classic fixed-sum situation with competing goals between the two parties. To do well in situations like this, negotiators are advised to pay close attention

to several important concepts. We will introduce these concepts gradually as we continue to progress through Feben's negotiation with John.

They met the next day at the construction site to take a tour and begin talking numbers. As they walked around John casually made the first offer, suggesting that the selling price was 300,000 Br. This was 20,000 Br more than Feben hoped to pay, but 10,000 Br less than the amount she considered her maximum affordable price. These numbers represent key points in the analysis of any distributive bargaining situation. Feben's preferred price is the target point, the point at which a negotiator would like to conclude negotiations. The target is also sometimes referred to as a negotiator's *aspiration*. The price beyond which Feben will not go is the **resistance point**, a negotiator's bottom line—the most he or she will pay as a buyer (for a seller, it's the smallest amount they will settle for). It is also sometimes referred to as a *reservation price*. Finally, the asking price is the initial price set by the seller; Feben might decide to counter John's asking price with her initial offer—the first number she will quote to the seller.

This illustration provides the basic elements of a *distributive bargaining situation.* It is also called competitive, or win–lose, bargaining. In distributive bargaining, the goals of one party are usually in fundamental and direct conflict with the goals of the other party. Resources are fixed and limited, and both parties want to maximize their share. As a result, each party will use strategies and tactics to maximize his or her share of the outcomes. One important strategy is to guard information carefully—negotiators only give information to the other party when it provides a strategic advantage. Meanwhile, it is highly desirable to get information from the other party to improve negotiation power. Distributive bargaining is basically a competition over who is going to get the most of a limited resource, which is often money. Whether or not one or both parties achieve their objectives will depend on the strategies and tactics they employ.

There are three reasons every negotiator should understand distributive bargaining. First, negotiators face some interdependent situations that are distributive, and to do well in them they need to understand how they work. Second, because many people use distributive bargaining strategies and tactics almost exclusively, all negotiators need to understand how to counter their effects. Third, every negotiation situation has the potential to require

distributive bargaining skills when at the "claiming-value" stage. Integrative negotiation focuses on ways to create value but also includes a claiming stage, where the value created is distributed. (Integrative negotiation is discussed extensively in Chapter 4.) Understanding distributive strategies and tactics is important and useful, but negotiators need to recognize that these tactics can also be counterproductive, costly, and may not work. Often they cause the negotiating parties to focus so much on their differences that they ignore what they have in common. These negative effects notwithstanding, distributive bargaining strategies and tactics are quite useful when negotiators want to maximize the value obtained in a single deal, when the relationship with the other party is not important, and when they are at the claiming-value stage of negotiations.

The discussion of strategies and tactics in this chapter is intended to help negotiators understand the dynamics of distributive bargaining and thereby obtain a better deal. A thorough understanding of these concepts will also allow negotiators who are by nature not comfortable with distributive bargaining to manage distributive situations proactively. Finally, an understanding of these strategies and tactics will help negotiators at the claiming-value stage of any negotiation.

How does Feben decide on her initial offer? There are many ways to answer this question. Fundamentally, however, to make a good initial offer Feben must understand something about the process of negotiation. In Chapter 1, we discussed how people expect give-and-take when they negotiate, and Feben needs to factor this into her initial offer. If Feben opened the negotiation at her target point (280,000 Br) and then had to make a concession, this first concession would have her moving away from her target point to a price closer to her resistance point. If she really wants to achieve her target, she should make an initial offer that is lower than her target point to create some room for making concessions. At the same time, the starting point cannot be too far from the target point. If John made the first offer too low (e.g., 200,000 Br), Feven might break off negotiations, believing her to be unreasonable or foolish. Although judgments about how to determine first offers can often be quite complex and can have a dramatic influence on the course of negotiation, let us stay with the simple case for the moment and assume that Feben decided to offer 270,000 Br as a reasonable first offer; this price is less than her target point and well below her

resistance point. In the meantime, remember that although this illustration concerns only price, all other issues or agenda items for the negotiation have starting, target, and resistance points.

Both parties to a negotiation should establish their starting, target, and resistance points before beginning a negotiation. Starting points are often in the opening statements each party makes (i.e., the seller's listing price and the buyer's first offer). The target point is usually learned or inferred as negotiations get under way. People typically give up the margin between their starting points and target points as they make concessions. The resistance point, the point beyond which a person will not go and would rather break off negotiations, is not known to the other party and should be kept secret. One party may not learn the other's resistance point even after the end of a successful negotiation. After an unsuccessful negotiation, one party may infer that the other's resistance point was near the last offer the other was willing to consider before the negotiation ended.

The parties' starting and resistance points are usually arranged in reverse order, with the resistance point being a high price for the buyer and a low price for the seller. Thus, continuing the illustration, Feben would have been willing to pay up to 310,000 Br for the unit John asked 300,000 Br for. Feben can speculate that John may be willing to accept something less than 300,000 Br and might well regard 290,000 Br as a desirable figure. What Feben does not know (but would dearly like to) is the lowest figure that John would accept. Is it 290,000 Br? 285,000 Br?,Feben assumes it is 275,000 Br (and for now we will assume this is accurate). John, for his part, initially knows nothing about Feben's position butsoon learns her starting point when she offers 270,000 Br. John may suspect that Feben's target point is not too far away (in fact it is 280,000 Br, but John doesn't know this) and has no idea of her resistance point (310,000 Br). This information—what Feben knows or infers about John's positions—is represented in Figure 3.1 as follows.

Figure 3.1 The Situation between Feben and John

Br 270K	**Br 275K**	**Br 280K**	**Br 285K**	**Br 290K**	**Br 295K**	**Br 300K**	**Br 305K**	**Br 310K**

Seller's Bargaining Range (John)

Buyer's Bargaining Range (Feben)

Feben's John's Feben's   John's
Feben's Opening Resistance Target Asking   Resistance
Offer Point   Point Price   Point
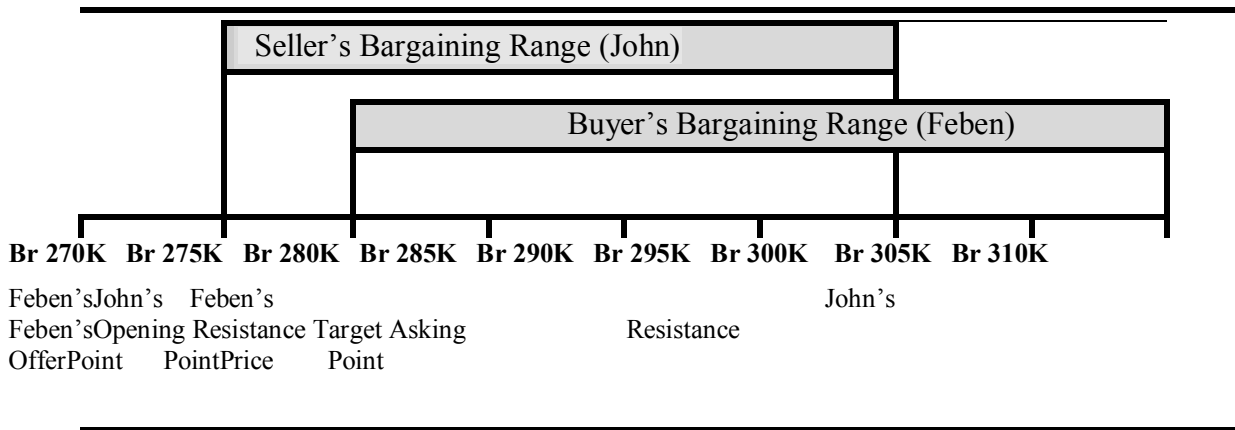
The figure also illustrates another important concept, the spread between the resistance points, called the **bargaining zone**, or *zone of potential agreement*. In this area the actual bargaining takes place, for anything outside these points will be summarily rejected by one of the two negotiators. When the buyer's resistance point is above the seller's she is minimally willing to pay more than he is minimally willing to sell for, as is true in this example there is a *positive bargaining zone.* When the reverse is true—the seller's resistance point is above the buyer's, and the buyer won't pay more than the seller will minimally accept—there is a *negative bargaining zone*. If, in the example, John would minimally accept 300,000 Br and Feben would maximally pay 280,000 Br, then a negative bargaining range would exist. Negotiations that begin with a negative bargaining range are likely to stalemate. They can be resolved only if one or both parties are persuaded to change their resistance points or if someone else forces a solution upon them that one or both parties dislike.

Target points, resistance points, and initial offers all play an important role in distributive bargaining. Target points influence both negotiator outcomes and negotiator satisfaction with their outcomes, opening offers play an important role in influencing negotiation outcomes (see below), and resistance points play a very important role as a warning for the possible presence of hardball tactics.

The Role of Alternatives to a Negotiated Agreement

In addition to opening bids, target points, and resistance points, a fourth factor may enter the negotiations: an alternative outcome that can be obtained by completing a deal with someone else. In some negotiations, the parties have only two fundamental choices: (1) reach a deal with the other party, or (2) reach no settlement at all. In other negotiations, however, one or both parties may have the possibility of an alternative deal with another party. Thus, in the case of Feben and John, Feben may continue searching for a unit and find another she is willing buy. Similarly, if John waits long enough he will presumably find another interested buyer. If Feben picks a different unit to buy, speaks to the owner of that unit, and negotiates the best price that she can, that price represents her alternative.

Settlement Point

The fundamental process of distributive bargaining is to reach a settlement within a positive bargaining zone. The objective of both parties is to obtain as much of the bargaining zone as possible—that is, to reach an agreement as close to the other party's resistance point as possible.

Both parties in distributive bargaining know that they might have to settle for less than what they would prefer (their target point), but they hope that the agreement will be better than their own resistance point. For agreement to occur, both parties must believe that the settlement, although perhaps less desirable than they would prefer, is the best that they can get. This belief is important, both for reaching agreement and for ensuring support for the agreement after the negotiation concludes. Negotiators who do not think they got the best agreement possible, or who believe that they lost something in the deal, may try to get out of the agreement later or find other ways to recoup their losses. If Feben thinks she got the short end of the deal, she could make life miserable and expensive for John by making extraneous claims later claiming that the unit had hidden damages, and so on. Another factor that will affect satisfaction with the agreement is whether the parties will see or deal with each other again. If John is selling all the units and moving on to other developments, then Feben may be unable to contact him later for any adjustments and should therefore ensure that she evaluates the current deal very carefully (good advice in any situation, but especially the case here).

3.2 Fundamental Strategies

The primary objective in distributive bargaining is to maximize the value of the current deal. In the current example, the buyer has four fundamental strategies available:

To push for a settlement close to the seller's (unknown) resistance point, thereby yielding the largest part of the settlement range for the buyer. The buyer may attempt to influence the seller's view of what settlements are possible by making extreme offers and small concessions.

1. To convince the seller to change his resistance point by influencing the seller's beliefs about the value of the unit (e.g., by telling him that the unit is overpriced), and thereby increase the bargaining range.

2. If a negative settlement range exists, to convince the seller to reduce his resistance point to create a positive settlement zone or to change her own resistance point to create an overlap. Thus, John could be persuaded to accept a lower price, or Feben could decide she has to pay more than she wanted to.

3. To convince the seller to believe that this settlement is the best that is possible—not that it is all he can get, or that he is incapable of getting more, or that the buyer is winning by getting more. The distinction between a party believing that an agreement is the best possible (and not the other interpretations) may appear subtle and semantic. However, in getting people to agree it is important that they feel as though they got the best possible deal. Ego satisfaction is often as important as achieving tangible objectives (recall the discussion of tangibles and intangibles in Chapter 1).

Discovering the Other Party's Resistance Point

Information is the life force of negotiation. The more you can learn about the other party's target, resistance point, motives, feelings of confidence, and so on, the more able you will be to strike a favorable agreement. At the same time, you do not want the other party to have certain information about you. Your resistance point, some of your targets, and confidential information about a weak strategic position or an emotional vulnerability are best concealed.

Influencing the Other Party's Resistance Point

Central to planning the strategy and tactics for distributive bargaining is locating the other party's resistance point and the relationship of that resistance point to your own. Keep in mind that by definition, a resistance point is the point at which the person is indifferent to a deal; beyond that point they prefer no deal. The resistance point is established by the value expected from a particular outcome, which in turn is the product of the worth and costs of an outcome. Feben sets her resistance point based on the amount of money she can afford to pay (in total or in monthly mortgage payments), the estimated market value or worth of the unit, and other factors. The following factors are important in attempting to influence the other person's resistance point:

(1) The value the other attaches to a particular outcome,

(2) The costs the other attaches to delay or difficulty in negotiations, and

(3) The cost the other attaches to having the negotiations aborted.

A significant factor in shaping the other person's understanding of what is possible and therefore the value he or she places on particular outcomes is the other's understanding of your own situation. Therefore, when influencing the other's viewpoint, you must also deal with the other party's understanding of your value for a particular outcome, the costs you attach to delay or difficulty in negotiation, and your cost of having the negotiations aborted.

To explain how these factors can affect the process of distributive bargaining, we will make four major propositions.

1. The higher the other party's estimate of your cost of delay or impasse, the stronger the other party's resistance point will be. If the other party sees that you need a settlement quickly and cannot defer it, he or she can seize this advantage and press for a better outcome. Expectations will rise and the other party will set a more demanding resistance point. The more you can convince the other that your costs of delay or aborting negotiations are low (that you are in no hurry and can wait forever), the more modest the other's resistance point will be.

2. The higher the other party's estimate of his or her own cost of delay or impasse, the weaker the other party's resistance point will be. The more a person needs a settlement,

the more modest he or she will be in setting a resistance point. Therefore, the more you can do to convince the other party that delay or aborting negotiations will be costly, the more likely he or she will be to establish a modest resistance point. In contrast, the more attractive the other party's alternatives, the more likely he or she will be to set a high resistance point. If negotiations are unsuccessful, the other party can move to an attractive alternative. In the earlier example, we mentioned that both Feben and John have satisfactory alternatives.

3. The less the other party values an issue, the lower their resistance point will be. The resistance point may soften as the person reduces how valuable he or she considers that issue. If you can convince the other party that a current negotiating position will not have the desired outcome or that the present position is not as attractive as the other believes, then he or she will adjust their resistance point.

4. The more the other party believes that you value an issue, the lower their resistance point may be. The more you can convince the other that you value a particular issue the more pressure you put on the other party to set a more modest resistance point with regard to that issue.

3.3 Tactical Tasks

Within the fundamental strategies of distributive bargaining there are four important tactical tasks concerned with targets, resistance points, and the costs of terminating negotiations for a negotiator to consider:

1. Assess the other party's target, resistance point, and cost of terminating negotiations;

2. manage the other party's impression of the negotiator's target, resistance point, and cost of terminating negotiation;

3. Modify the other party's perception of his or her own target, resistance point, and cost of terminating negotiation; and

4. Manipulate the actual costs of delaying or terminating negotiations. Each of these tasks is discussed in more detail below.

   1. Assessing the Other Party's Target, Resistance Point, and Costs of Terminating Negotiations

An important first step for a negotiator is to obtain information about the other party's target and resistance points. The negotiator can pursue two general routes to achieve this task: obtain information indirectly about the background factors behind an issue (indirect assessment) or obtain information directly from the other party about their target and resistance points (direct assessment).

Indirect Assessment: An individual sets a resistance point based on many potential factors. For example, how do you decide how much rent or mortgage payment you can afford each month? How do you decide what a condo or used car is really worth? There are lots of ways to go about doing this. Indirect assessment means determining what information an individual likely used to set target and resistance points and how he or she interpreted this information.

Direct Assessment: In bargaining, the other party does not usually reveal accurate and precise information about his or her targets, resistance points, and expectations. Sometimes, however, the other party will provide accurate information. When pushed to the absolute limit and in need of a quick settlement, the other party may explain the facts quite clearly. If company executives believe that a wage settlement above a certain point will drive the company out of business, they may choose to state that absolute limit very clearly and go to considerable lengths to explain how it was determined. Similarly, a condo buyer may tell the seller his absolute maximum price and support it with an explanation of income and other expenses. In these instances, the party revealing the information believes that the proposed agreement is within the settlement range and that the other party will accept the offered information as true rather than see it as a bargaining ploy. An industrial salesperson may tell the purchaser about product quality and service, alternative customers who want to buy the product, and the time required to manufacture special orders.

2. Manage the Other Party's Impressions

An important tactical task for negotiators is to control the information sent to the other party about your target and resistance points, while simultaneously guiding him or her to form a preferred impression of them. Negotiators need to screen information about their positions and to represent them as they would like the other to believe them. Generally

speaking, screening activities are more important at the beginning of negotiation, and direct action is more useful later on. This sequence also allows time to concentrate on gathering information from the other party, which will be useful in evaluating resistance points, and on determining the best way to provide information to the other party about one's own position.

Screening Activities: The simplest way to screen a position is to say and do as little as possible. "Silence is golden" when answering questions; words should be invested in asking the other negotiator questions instead. Reticence reduces the likelihood of making verbal slips or presenting any clues that the other party could use to draw conclusions. A look of disappointment or boredom, fidgeting and restlessness, or probing with interest all can give clues about the importance of the points under discussion. Concealment is the most general screening activity.

Modify the Other Party's Perceptions

A negotiator can alter the other party's impressions of his or her own objectives by making outcomes appear less attractive or by making the cost of obtaining them appear higher. The negotiator may also try to make demands and positions appear more attractive or less unattractive to the other party.

There are several approaches to modifying the other party's perceptions. One approach is to interpret for the other party what the outcomes of his or her proposal will really be. A negotiator can explain logically how an undesirable outcome would result if the other party really did get what he or she requested. This may mean highlighting something that has been overlooked. For example, in union–management negotiations, management may demonstrate that a union request for a six-hour workday would, on the one hand, not increase the number of employees because it would not be worthwhile to hire people for two hours a day to make up for the hours taken from the standard eight-hour day. On the other hand, if the company were to keep production at the present level, it would be necessary to use the present employees on overtime, thereby increasing the total labor cost and, subsequently, the price of the product. This rise in cost would reduce demand for the product and, ultimately, the number of hours worked or the number of workers.

Manipulate the Actual Costs of Delay or Termination

Negotiators have deadlines. A contract will expire. Agreement has to be reached before an important meeting occurs. Someone has to catch a plane. Extending negotiations beyond a dead- line can be costly, particularly to the person who has the deadline, because that person has to either extend the deadline or go home empty-handed. At the same time, research and practical experience suggest that a large majority of agreements in distributive bargaining are reached when the deadline is near. In addition, time pressure in negotiation appears to reduce negotiator demands, and when a negotiator represents a constituency, time pressure appears to reduce the likelihood of reaching an agreement. Manipulating a deadline or failing to agree by a particular deadline can be a powerful tool in the hands of the person who does not face deadline pressure. In some ways, the ultimate weapon in negotiation is to threaten to terminate negotiations, denying both parties the possibility of a settlement. One side then will usually feel this pressure more acutely than the other, and so the threat is a potent weapon. There are three ways to manipulate the costs of delay in negotiation: (1) plan disruptive action, (2) form an alliance with outsiders, and (3) manipulate the scheduling of negotiations.

Disruptive Action: One way to encourage settlement is to increase the costs of not reaching a negotiated agreement through disruptive action. In one instance, a group of unionized food-service workers negotiating with a restaurant rounded up supporters, had them enter the restaurant just prior to lunch, and had each person order a cup of coffee and drink it leisurely. When regular customers came to lunch, they found every seat occupied. In re- cent NFL contract negotiations, players took to social media to vent their frustrations about management with the league's fans. By sharing their opinions publically through Twitter, the players hoped to influence the negotiation process and a settlement. Public picketing of a business, boycotting a product or company, and locking negotiators in a room until they reach agreement are all forms of disruptive action that increase the costs to negotiators for not settling and thereby bring them back to the bargaining table. Such tactics can work, but they may also produce anger and escalate the conflict.

Schedule Manipulation: The negotiation scheduling process can often put one party at a considerable disadvantage, and the negotiation schedule can be used to increase time pressure on negotiators. Business people going overseas to negotiate with customers or

suppliers often find that negotiations are scheduled to begin immediately after their arrival, when they are still suffering from the fatigue of travel and jet lag. Alternatively, a host party can use delay tactics to squeeze negotiations into the last remaining minutes of a session in order to extract concessions from the visiting party. Automobile dealers likely negotiate differently with a customer half an hour before quitting time on Saturday than at the beginning of the workday on Monday. Industrial buyers have a much more difficult negotiation when they have a short lead time because their plants may have to sit idle if they cannot secure a new contract for raw materials in time.

The opportunities to increase or alter the timing of negotiation vary widely across negotiation domains. In some industries it is possible to stockpile raw materials at relatively low cost or to buy in large bulk lots; in other industries, however, it is essential that materials arrive at regular intervals because they have a short shelf life (especially when there are just-in-time inventory procedures). There are far fewer opportunities for an individual to create costly delays when negotiating a home purchase than when negotiating a bulk order of raw materials. Nonetheless, the tactic of increasing costs by manipulating deadlines and time pressures is an option that can both enhance your own position and protect you from the other party's actions.

3.4 Positions Taken During Negotiation

Effective distributive bargainers need to understand the process of taking positions during bargaining, including the importance of the opening offer and the opening stance, and the role of making concessions throughout the negotiation process. At the beginning of negotiations, each party takes a position, and then one party will typically change his or her position in response to information from the other party or in response to the other party's behavior. Below we will return to the negotiation between Alex and John to illustrate the power of opening offers and the concession-making process that usually follows.

Opening Offers

The power of first offers comes from the anchoring effect, which is based on the observation that people making decisions under uncertain conditions are influenced by initial starting numbers. Research by Adam Galinsky and Thomas Mussweiler suggests that making the first offer in a negotiation is advantageous because it can anchor a

negotiation, especially when information about alternative negotiation outcomes is not considered. Negotiators can dampen the "first offer effect" by the other negotiator, however, by concentrating on their own target and focusing on the other negotiator's resistance point.

As long as opening offers are not too outrageous, research indicates that negotiators who make exaggerated opening offers get higher settlements than do those who make low or modest opening offers. There are at least two reasons that an ambitious opening offer is advantageous. First, it gives the negotiator room for movement and therefore allows him or her time to learn about the other party's priorities. Second, an ambitious opening offer acts as a meta-message and may create, in the other party's mind, the impression that:

1. There is a long way to go before a reasonable settlement will be achieved,

2. More concessions than originally intended may have to be made to bridge the difference between the two opening positions, and

3. The other may have incorrectly estimated his or her own resistance point.

Two disadvantages of an ambitious opening offer are that (1) it may be summarily rejected by the other party, and (2) it communicates an attitude of toughness that may be harmful to long-term relationships. The more exaggerated the offer, the greater is the likelihood that it will be summarily rejected by the other side. Therefore, negotiators who make exaggerated opening offers should also have viable alternatives they can employ if the opposing negotiator refuses to deal with them.

Opening Stance

A second decision to be made at the outset of distributive bargaining concerns the stance or attitude to adopt during the negotiation. Will you be competitive (fighting to get the best on every point) or moderate (willing to make concessions and compromises)? Some negotiators take a belligerent stance, attacking the positions, offers, and even the character of the other party. In response, the other party may mirror the initial stance, meeting belligerence with belligerence. Even if the other party does not directly mimic a belligerent stance, he or she is unlikely to respond in a warm and open manner. Some negotiators adopt a position of moderation and understanding, seeming to say, "Let's be reasonable people who can solve this problem to our mutual satisfaction." Even if the attitude is not

mirrored, the other's response is likely to be constrained by such a moderate opening stance.

Initial Concessions

An opening offer is usually met with a counteroffer, and these two offers define the initial bargaining range. Sometimes the other party will not counteroffer but will simply state that the first offer (or set of demands) is unacceptable and ask the opener to come back with a more reasonable set of proposals. For example, John might have responded to Feben's 270,000 Br offer by saying, "That's quite a bit lower than I had in mind. Maybe we need to keep looking at the unit before we begin talking numbers." In any event, after the first round of offers, the next question is, what movement or concessions are to be made? Negotiators can choose to make none, to hold firm and insist on the original position, or they can make some concessions. Note that it is not an option to escalate one's opening offer, that is, to set an offer further away from the other party's target point than one's first offer. This would be uniformly met with disapproval from the other negotiator. If concessions are to be made, the next question is, how large should they be? Note that the first concession conveys a message, frequently a symbolic one, to the other party about how you will proceed.

Role of Concessions

Concessions are central to negotiation. Without them, negotiations would not exist. If one side is not prepared to make concessions, the other side must capitulate or the negotiations will deadlock. People enter negotiations expecting concessions. Negotiators are less satisfied when negotiations conclude with the acceptance of their first offer, likely because they feel they could have done better. Good distributive bargainers will not begin negotiations with an opening offer too close to their own resistance point, but rather will ensure that there is enough room in the bargaining range to make some concessions. Research suggests that people will generally accept the first or second offer that is better than their target point, so negotiators should try to identify the other party's target point accurately and avoid conceding too quickly to that point.

There is ample data to show that parties feel better about a settlement when the negotiation involved a progression of concessions than when it didn't. Rubin and Brown suggest that

bargainers want to believe they are capable of shaping the other's behavior, of causing the other to choose as he or she does. Because concession making indicates an acknowledgment of the other party and a movement toward the other's position, it implies recognition of that position and its legitimacy. The intangible factors of status and recognition may be as important as the tangible issues themselves. Concession making also exposes the concession maker to some risk. If the other party does not reciprocate, the concession maker may appear to be weak. Thus, not reciprocating a concession may send a powerful message about firmness and leaves the concession maker open to feeling that his or her esteem has been damaged or reputation diminished.

A reciprocal concession cannot be haphazard. If one party has made a major concession on a significant point, it is expected that the return offer will be on the same item or one of similar weight and somewhat comparable magnitude. To make an additional concession when none has been received (or when the other party's concession was inadequate) can imply weakness and can squander valuable maneuvering room. After receiving an inadequate concession, negotiators may explicitly state what they expect before offering further concessions: To encourage further concessions from the other side, negotiators sometimes link their concessions to a prior concession made by the other.

Pattern of Concession Making

The pattern of concessions a negotiator makes contains valuable information, but it is not always easy to interpret. When successive concessions get smaller, the obvious message is that the concession maker's position is getting firmer and that the resistance point is being approached. This generalization needs to be tempered, however, by noting that a concession late in negotiations may also indicate that there is little room left to move. When the opening offer is exaggerated, the negotiator has considerable room available for packaging new offers, making it relatively easy to give fairly substantial concessions. When the offer or counteroffer has moved closer to a negotiator's target point, giving a concession the same size as the initial one may take a negotiator past the resistance point. The pattern of concession making is also important.

Final Offers

Eventually a negotiator wants to convey the message that there is no further room for movement—that the present offer is the final one. A good negotiator will say, "This is all I can do" or "This is as far as I can go." Sometimes, however, it is clear that a simple statement will not suffice; an alternative is to use concessions to convey the point. A negotiator might simply let the absence of any further concessions convey the message in spite of urging from the other party. The other party may not recognize at first that the last offer was the final one and might volunteer a further concession to get the other to respond. Finding that no further concession occurs, the other party may feel betrayed and perceive that the pattern of concession–counter concession was violated. The resulting bitterness may further complicate negotiations.

3.6 Closing the Deal

After negotiating for a period of time, and learning about the other party's needs, positions, and perhaps resistance point, the next challenge for a negotiator is to close the agreement. Several tactics are available to negotiators for closing a deal; choosing the best tactic for a given negotiation is as much a matter of art as science.

Provide Alternatives Rather than making a single final offer, negotiators can provide two or three alternative packages for the other party that are more or less equivalent in value. People like to have choices, and providing a counterpart with alternative packages can be a very effective technique for closing a negotiation. This technique can also be used when a task force cannot decide on which recommendation to make to upper management. If in fact there are two distinct, defensible possible solutions, then the task force can forward both with a description of the costs and benefits of each.

Assume the Close: Salespeople use an assume-the-close technique frequently. After having a general discussion about the needs and positions of the buyer, often the seller will take out a large order form and start to complete it. The seller usually begins by asking for the buyer's name and address before moving on to more serious points (e.g., price, model). When using this technique, negotiators do not ask the other party if he or she would like to

make a purchase. Rather, they act as if the decision to purchase something has already been made so they might as well start to get the paperwork out of the way.

Split the Difference: Splitting the difference is perhaps the most popular closing tactic. The negotiator using this tactic will typically give a brief summary of the negotiation ("We've both spent a lot of time, made many concessions, etc.") and then suggest that, because things are so close, "why don't we just split the difference?" While this can be an effective closing tactic, it does presume that the parties started with fair opening offers. A negotiator who uses an exaggerated opening offer and then suggests a split-the-difference close is using a hardball tactic.

Exploding Offers: An exploding offer contains an extremely tight deadline to pressure the other party to agree quickly. For example, a person who has interviewed for a job may be offered a very attractive salary and benefits package, but also be told that the offer will expire in 24 hours. The purpose of the exploding offer is to convince the other party to accept the settlement and to stop considering alternatives.

Sweeteners: Another closing tactic is to save a special concession for the close. The other negotiator is told, "I'll give you X if you agree to the deal." For instance, when selling a condo the owner could agree to include the previously excluded curtains, appliances, or light fixtures to close the deal. To use this tactic effectively negotiators need to include the sweetener in their negotiation plans or they may concede too much during the close.

3.7 Hardball Tactics

We now turn to a discussion of hardball tactics in negotiation. Many popular books of negotiation discuss using hardball negotiation tactics to beat the other party. Such tactics are designed to pressure negotiators to do things they would not otherwise do, and their presence usually disguises the user's adherence to a decidedly distributive bargaining approach. It is not clear exactly how often or how well these tactics work, but they work best against poorly prepared negotiators. They also can backfire, and there is evidence that very adversarial negotiators are not effective negotiators. Many people find hardball tactics offensive and are motivated for revenge when such tactics are used against them. Many negotiators consider these tactics out-of-bounds for any negotiation situation. We do not

recommend the use of any of the following techniques. It is important that negotiators understand hardball tactics and how they work so they can recognize and understand them if hardball tactics are used against them.

Dealing with Typical Hardball Tactics

The negotiator dealing with a party who uses hardball tactics has several choices about how to respond. A good strategic response to these tactics requires that the negotiator identify the tactic quickly and understand what it is and how it works. Most of the tactics are designed either to enhance the appearance of the bargaining position of the person using the tactic or to detract from the appearance of the options available to the other party. How best to respond to a tactic depends on your goals and the broader context of the negotiation (With whom are you negotiating? What are your alternatives?). No one response will work in all situations. We now discuss four main options that negotiators have for responding to typical hardball tactics.

Ignore Them Although ignoring a hardball tactic may appear to be a weak response, it can in fact be very powerful. It takes a lot of energy to use some of the hardball tactics described below, and while the other side is using energy to play these games, you can be using your energy to work on satisfying your needs. Not responding to a threat is often the best way of dealing with it. Pretend you didn't hear it. Change the subject and get the other party involved in a new topic. Call a break and, upon returning, switch topics. All these options can deflate the effects of a threat and allow you to press on with your agenda while the other party is trying to decide what trick to use next.

Discuss Them Fisher, and Patton suggest that a good way to deal with hardball tactics is to discuss them that is, label the tactic and indicate to the other party that you know what she is doing. Then offer to negotiate the negotiation process itself, such as behavioral expectations of the parties, before continuing on to the substance of the talks. Propose a shift to less aggressive methods of negotiating. Explicitly acknowledge that the other party is a tough negotiator but that you can be tough too. Then suggest that you both change to more productive methods that can allow you both to gain. Fisher, and Patton suggest that negotiators separate the people from the problem and then be hard on the problem, soft on

the people. It doesn't hurt to remind the other negotiator of this from time to time during the negotiation.

Respond in Kind: It is always possible to respond to a hardball tactic with one of your own. Although this response can result in chaos, produce hard feelings, and be counterproductive, it is not an option that should be dismissed out of hand. Once the smoke clears, both parties will realize that they are skilled in the use of hardball tactics and may recognize that it is time to try something different. Responding in kind may be most useful when dealing with another party who is testing your resolve or as a response to exaggerated positions taken in negotiations.

Co-Opt the Other Party Another way to deal with negotiators who are known to use aggressive hardball tactics is to try to befriend them before they use the tactics on you. This approach is built on the theory that it is much more difficult to attack a friend than an enemy. If you can stress what you have in common with the other party and find another element upon which to place the blame (the system, foreign competition), you may then be able to sidetrack the other party and thereby prevent the use of any hardball tactics.

Typical Hardball Tactics

We will now discuss some of the more frequently described hardball tactics and their weaknesses.

Good Cop/Bad Cop The good cop/bad cop tactic is named after a police interrogation technique in which two officers (one kind, the other tough) take turns questioning a suspect. The use of this tactic in negotiations typically goes as follows: The first interrogator (bad cop) presents a tough opening position, punctuated with threats, obnoxious behavior, and intransigence. The interrogator then leaves the room to make an important telephone call or to cool off—frequently at the partner's suggestion. While out of the room, the other interrogator (good cop) tries to reach a quick agreement before the bad cop returns and makes life difficult for everyone.

Lowball/Highball: Negotiators using lowball/highball tactic start with a ridiculously low (or high) opening offer that they know they will never achieve. The theory is that the extreme offer will cause the other party to re-evaluate his or her own opening offer and

move closer to or beyond their resistance point. The risk of using this tactic is that the other party will think negotiating is a waste of time and will stop negotiating. Even if the other party continues to negotiate after receiving a lowball (highball) offer, it takes a very skilled negotiator to be able to justify the extreme opening offer and to finesse the negotiation back to a point where the other side will be willing to make a major concession toward the outrageous bid.

Good preparation for the negotiation is a critical defense against this tactic, which is something to keep in mind as you read Chapter 2 on planning for negotiation. Proper planning will help you know the general range for the value of the item under discussion and allow you to respond verbally with one of several different strategies:

1. Insisting that the other party start with a reasonable opening offer and refusing to negotiate further until he or she does;
2. Stating your understanding of the general market value of the item being discussed, supporting it with facts and figures, and by doing so, demonstrating to the other party that you won't be tricked;
3. Threatening to leave the negotiation, either briefly or for good, to demonstrate dissatisfaction with the other party for using this tactic; and
4. Responding with an extreme counteroffer to send a clear message you won't be anchored by an extreme offer from the other party.

Bogey Negotiators using the bogey tactic pretend that an issue of little or no importance to them is quite important. Later in the negotiation, this issue can then be traded for major concessions on issues that are actually important to them. This tactic is most effective when negotiators identify an issue that is quite important to the other side but of little value to themselves. For example, a seller may have a product in the warehouse ready for delivery. When negotiating with a purchasing agent, the seller may ask for large concessions to process a rush order for the client. The seller can reduce the size of the concession demanded for the rush order in exchange for concessions on other issues, such as the price or the size of the order.

The Nibble Negotiators using the nibble tactic ask for a proportionally small concession (for instance, 1 to 2 percent of the total profit of the deal) on an item that hasn't been discussed previously to close the deal. Herb Cohen describes the nibble as follows: After trying many different suits in a clothing store, tell the clerk that you will take a given suit if a tie is included for free. The tie is the nibble. Cohen claims that he usually gets the tie. In a business context, the tactic occurs like this: After a considerable amount of time has been spent in negotiation, when an agreement is close, one party asks to include a clause that hasn't been discussed previously and that will cost the other party a proportionally small amount. This amount is too small to lose the deal over, but large enough to upset the other party. This is the major weakness with the nibble tactic—many people feel that the party using the nibble did not bargain in good faith (as part of a fair negotiation process, all items to be discussed during the negotiation should be placed on the agenda early). Even if the party claims to be very embarrassed about forgetting this item until now, the party who has been nibbled will not feel good about the process and will be motivated to seek revenge in future negotiations.

According to Landon, there are two good ways to combat the nibble. First, respond to each nibble with the question "What else do you want?" This should continue until the other party indicates that all issues are in the open; then both parties can discuss all the issues simultaneously. Second, have your own nibbles prepared to offer in exchange. When the other party suggests a nibble on one issue, you can respond with your own nibble on another.

Intimidation: Many tactics can be gathered under the general label of intimidation. What they have in common is that they all attempt to force the other party to agree by means of an emotional ploy, usually anger or fear. **For example**, the other party may deliberately use *anger* to indicate the seriousness of a position. Another form of intimidation includes increasing the appearance of *legitimacy*. When legitimacy is high, set policies or procedures are in place for resolving disputes. Negotiators who do not have such policies or procedures available may try to invent them and then impose them on the other negotiator while making the process appear legitimate. For example, policies that are written in manuals or preprinted official forms and agreements are less likely to be

questioned than those that are delivered verbally; long and detailed loan contracts that banks use for consumer loans are seldom read completely. The greater the appearance of legitimacy, the less likely the other party will be to question the process being followed or the contract terms being proposed.

Finally, *guilt* can also be used as a form of intimidation. Negotiators can question the other party's integrity or the other's lack of trust in them. The purpose of this tactic is to place the other party on the defensive so that they are dealing with the issues of guilt or trust rather than discussing the substance of the negotiation. To deal with intimidation tactics, negotiators have several options. Intimidation tactics are designed to make the intimidator feel more powerful than the other party and to lead people to make concessions for emotional rather than objective reasons (e.g., a new fact). When making any concession, it is important for negotiators to understand why they are doing so. If one starts to feel threatened, assumes that the other party is more powerful (when objectively he or she is not), or simply accepts the legitimacy of the other negotiator's "company policy," then it is likely that intimidation is having an effect on the negotiations.

If the other negotiator is intimidating, then discussing the negotiation process with him or her is a good option. You can explain that your policy is to bargain in a fair and respectful manner, and that you expect to be treated the same way in return. Another good option is to ignore the other party's attempts to intimidate you, because intimidation can only influence you if you let it. While this may sound too simplistic, think for a moment about why some people you know are intimidated by authority figures and others are not—the reason often lies in the perceiver, not the authority figure.

Aggressive Behavior: A group of tactics similar to those described under intimidation includes various ways of being aggressive in pushing your position or attacking the other person's position. Aggressive tactics include a relentless push for further concessions ("You can do better than that"), asking for the best offer early in negotiations ("Let's not waste any time. What is the most that you will pay?"), and asking the other party to explain and justify his or her proposals item by item or line by line ("What is your cost breakdown for each item?"). The negotiator using these techniques is signaling a hard-nosed,

intransigent position and trying to force the other side to make many concessions to reach an agreement.

Snow Job The snow job tactic occurs when negotiators overwhelm the other party with so much information that he or she has trouble determining which facts are real or important, and which are included merely as distractions. Governments use this tactic frequently when releasing information publicly. Rather than answering a question briefly, they release thousands of pages of documents from hearings and transcripts that may or may not contain the information that the other party is seeking. Another example of the snow job is the use of highly technical language to hide a simple answer to a question asked by a non-expert. Any group of professionals such as engineers, lawyers, or computer network administrators can use this tactic to overwhelm ("snow") the other party with so much information and technical language that the non-experts cannot make sense of the answer. Frequently, in order not to be embarrassed by asking "obvious" questions, the recipient of the snow job will simply nod his or her head and passively agree with the other party's analysis or statements.

Negotiators trying to counter a snow job tactic can choose one of several alternative responses. First, they should not be afraid to ask questions until they receive an answer they understand. Second, if the matter under discussion is in fact highly technical, then negotiators may suggest that technical experts get together to discuss the technical issues. Finally, negotiators should listen carefully to the other party and identify consistent and inconsistent information. Probing for further information after identifying a piece of inconsistent information can work to undermine the effectiveness of the snow job.

Review Questions

True or False

1. In negotiation the range between the resistance points of the buyer and the seller is known as bargaining zone.
2. The primary objective in distributive bargaining is to minimize the value of the current deal.
3. In bargaining, the other party does not usually reveal accurate and precise information about his or her targets, resistance points, and expectations.
4. The disadvantages of an ambitious opening offer can be that it may be summarily rejected by the other party.
5. Hardball tactic is a closing tactic is to save a special concession for the close by which one negotiator say the other negotiator, "I'll give you X if you agree to the deal.

Short Answer Question

1. Define distributive bargaining and state condition where it is suitable to apply
2. Why do many people say hardball tactics offensive and are motivated for revenge when such tactics are used against them?
3. Discuss with the Nibble tactic in distributive bargaining

Self Check 3

No	Do students grasp Objectives / Competencies	Yes	No
1	Do you recognize distributive bargaining situations?		
2	Could you explain the importance of goals and targets, reservation points, and alternatives in distributive negotiation?		
3	Have you understand the varied tactical approaches used in distributive situations?		
4	Do recognize how to defend yourself from hardball tactics used by others?		

CHAPTER FOUR

STRATEGY AND TACTICS OF INTEGRATIVE BARGAINING

Learning Objectives

After successful completion of this chapter, students would be able to:

➢ Understand the basic elements of an integrative negotiation situation.

➢ Explore the strategy and tactics of integrative negotiation.

➢ Consider the key factors that facilitate successful integrative negotiation.

➢ Gain an understanding of why successful integrative negotiations are often difficult to achieve.

4.1 Introduction

Even well-intentioned negotiators can make the following three mistakes: failing to negotiate when they should, negotiate when they should not, or negotiating when they should but choosing an inappropriate strategy. As suggested by the dual concerns model described in Chapter 1, being committed to the other party's interests as well as to one's own makes problem solving the strategy of choice. In many negotiations there does not need to be winners and losers all parties can gain. Rather than assume that negotiations are win lose situations, negotiators can look for win–win solutions and often they will find them. Integrative negotiation variously known as cooperative, collaborative, win–win, mutual gains, or problem solving is the focus of this chapter.

In distributive bargaining, the goals of the parties are initially at odds or at least appear that way to some or all of the parties. Central to such conflict is the belief that there is a limited, controlled amount of key resources to be distributed a fixed-pie situation. Both parties may want to be the winner; both may want more than half of what is available. For example, both management (on behalf of the shareholders) and labor (on behalf of the rank and file) may believe they deserve the larger share of the company's profits. Both may want to win on the same dimension, such as the financial package or control of certain policy decisions. In these situations, their goals are mutually exclusive and lead to conflict.

What Makes Integrative Negotiation Different?

In Chapter 1 we listed elements common to all negotiations. For a negotiation to be characterized as integrative, negotiators must also:

➢ Focus on commonalties rather than differences.

➢ Attempt to address needs and interests, not positions.

➢ Commit to meeting the needs of all involved parties.

➢ Exchange information and ideas.

➢ Invent options for mutual gain.

➢ Use objective criteria for standards of performance.

➢ These requisite behaviors and perspectives are the main components of the integrative process.

4.2 An Overview of the Integrative Negotiation Process

Past experience, biased perceptions, and the truly distributive aspects of bargaining make it remarkable that integrative agreements occur at all. But they do, largely because negotiators work hard to overcome inhibiting factors and search assertively for common ground. Those wishing to achieve integrative results find that they must manage both the *context* and the *process* of the negotiation in order to gain the cooperation and commitment of all parties. Key contextual factors include creating a free flow of information, attempting to understand the other negotiator's real needs and objectives, emphasizing commonalities between parties, and searching for solutions that meet the goals and objectives of both parties. Managing integrative negotiations involves creating a process of problem identification, understanding the needs and interests of both parties, generating alternative solutions, and selecting among alternative solutions.

Creating a Free Flow of Information

Creating a free flow of information includes having both parties know and share their alternatives. Pinkley (1995) discovered that negotiators who are aware of each other's alternatives to a negotiated agreement were more likely to make their resistance points less extreme, improve negotiating trade-offs, and increase the size of the resource pie compared

with situations in which one or both negotiators were not aware of the alternatives. Pinkley concluded that "it is the negotiator with the alternative who is responsible for expanding the pie, but both members of the dyad determine its distribution". Negotiators who did not reveal the availability of a good alternative received some benefits to themselves, but those who did share information about their alternatives received additional benefits.

Attempting to Understand the Other Negotiator's Real Needs and Objectives

Negotiators differ in their values and preferences, as well as their thoughts and behaviors. One side needs and wants may or may not be the same as the other's party needs and wants. One must understand the other's needs before helping to satisfy them. When negotiators are aware of the possibility that the other's priorities are not the same as their own, this can stimulate the parties to exchange more information, understand the nature of the negotiation better, and achieve higher joint gains. Similarly, integrative agreements are facilitated when parties exchange information about their priorities for particular issues, but not necessarily about their positions on those issues. Throughout the process of sharing information about preferences and priorities, negotiators must make a true effort to understand what the other side really wants to achieve. This is in contrast to distributive bargaining, where negotiators either make no effort to understand the other side's needs and objectives or do so only to challenge, undermine, or even deny the other party the opportunity to have those needs and objectives met.

Emphasizing the Commonalities between the Parties and Minimizing the Differences

To sustain a free flow of information and the effort to understand the other's needs and objectives, negotiators may need a different outlook or frame of reference (see Chapter 2 for a discussion of framing). Individual goals may need to be redefined as best achieved through collaborative efforts directed toward a collective goal. Sometimes the collective goal is clear and obvious. For example, politicians in the same party may recognize that their petty squabbles must be put aside to ensure the party's victory at the polls. Managers who are quarreling over cutbacks in their individual departmental budgets may need to recognize that unless all departments sustain appropriate budget cuts, they will be unable

to change an unprofitable firm into a profitable one. At other times, the collective goal is neither so clear nor so easy to keep in sight.

Searching for Solutions That Meet the Needs and Objectives of Both Sides

The success of integrative negotiation depends on the search for solutions that meet the needs and objectives of both sides. In this process, negotiators must be firm but flexible— firm about their primary interests and needs, but flexible about how these needs and interests are met (Fisher, Ury, and Patton, 1991; Pruitt and Rubin, 1986). When the parties are used to taking a combative, competitive orientation toward each other, they are generally concerned only with their own objectives.

4.3 Key Steps in the Integrative Negotiation Process

There are four major steps in the integrative negotiation process:

1. Identify and define the problem,
2. understand the problem and bring interests and needs to the surface,
3. Generate alternative solutions to the problem, and
4. Evaluate those alternatives and select among them.

The first three steps of the integrative negotiation process are important for *creating value*. Work together to create value, negotiators need to understand the problem, identify the interests and needs of both parties, and generate alternative solutions. The fourth step of the integrative negotiation process, the evaluation and selection of alternatives, involves *claiming value*.

The relationship between creating and claiming value is shown graphically in Figure 4.1. The goal of creating value is to push the potential negotiation solutions toward the upper right-hand side of Figure 3.1. When this is done to the fullest extent possible, the line is called the *Pareto efficient frontier,* and it contains a point where "there is no agreement that would make any party better off without decreasing the outcomes to any other party. One way to conceptualize integrative negotiation is that it is the process of identifying Pareto efficient solutions.

The graph shows that there are several possible solutions in a negotiation, in this case between a buyer and a seller. The first three steps to integrative negotiation aim to ensure that negotiators do not agree to solutions that are below the Pareto efficient frontier because these solutions are suboptimal for both negotiators. The fourth step, choosing a solution or claiming value, uses some of the same skills as distributive bargaining. The transition from creating to claiming value in an integrative negotiation must be managed carefully and is discussed in more detail later in this chapter.

1. Identify and Define the Problem

The problem identification step is often the most difficult one, and it is even more challenging when several parties are involved. Consider the following example: a large electronics plant experienced serious difficulty with a product as it moved from the subassembly department to the final assembly department. Various pins and fittings that held part of the product in place were getting bent and distorted. When this happened, the unit would be laid aside as a reject. At the end of the month, the rejects would be returned to the subassembly department to be reworked, often arriving just when workers were under pressure to meet end-of-the-month schedules and were also low on parts. As a result, the reworking effort had to be done in a rush and on overtime. The extra cost of overtime did not fit into the standard cost allocation system. The manager of the subassembly department did not want the costs allocated to his department. The manager of the final assembly department insisted that she should not pay the additional cost; she argued that the subassembly department should bear the cost because its poor work caused the problem. The subassembly department manager countered that the parts were in good condition when they left his area and that it was the poor workmanship in the final assembly area that created the damage. The immediate costs were relatively small. What really concerned both managers was setting a long-term precedent for handling rejects and for paying the costs.

Eventually an integrative solution was reached. During any given month, the subassembly department had some short slack-time periods. The managers arranged for the final assembly department to return damaged products in small batches during those slack

periods. It also became clear that many people in the final assembly department did not fully understand the parts they were handling, which may have contributed to some of the damage. These workers were temporarily transferred to the subassembly department during assembly department slack periods to learn more about subassembly and to process some of the rush orders in that department.

This example captures several key aspects of the problem definition process (see Filley, 1975, and Shea, 1983, for fuller treatments of these points). The problem definition process is critical for integrative negotiation because it sets broad parameters regarding what the negotiation is about and provides an initial framework for approaching the discussion. It is important that this framework is comprehensive enough to capture the complexities inherent in the situation, while not making the situation appear more complex than it actually is.

Define the Problem in a Way That Is Mutually Acceptable to Both Sides: Ideally, parties should enter the integrative negotiation process with few preconceptions about the solution and with open minds about each other's needs. As a problem is defined jointly, it should accurately reflect both parties' needs and priorities.

State the Problem with an Eye toward Practicality and Comprehensiveness The major focus of an integrative agreement is to solve the core problem(s). Anything that distracts from this focus should be removed or streamlined to ensure that this objective is achieved. As a result, one might argue that problem statements should be as clear as possible. Yet if the problem is complex and multifaceted, and the statement of the problem does not reflect that complexity, then efforts at problem solving will be incomplete.

State the Problem as a Goal and Identify the Obstacles to Attaining This Goal: the parties should define the problem as a specific goal to be attained rather than as a solution process. That is, they should concentrate on what they want to achieve rather than how they are going to achieve it. They should then proceed to specify what obstacles must be overcome for the goal to be attained.

Depersonalize the Problem When parties are engaged in conflict, they tend to become evaluative and judgmental. They view their own actions, strategies, and preferences in a positive light and the other party's actions, strategies, and preferences in a negative light.

Separate the Problem Definition from the Search for Solutions Finally, it is important not to jump to solutions until the problem is fully defined. In distributive bargaining, negotiators are encouraged to state the problem in terms of their preferred solution and to make concessions based on this statement. In contrast, parties engaged in integrative negotiation should avoid stating solutions that favor one side or the other until they have fully defined the problem and examined as many alternative solutions as possible.

2. Understand the Problem Fully—Identify Interests and Needs

Many writers on negotiation most particularly have stressed that a key to achieving an integrative agreement is the ability of the parties to understand and satisfy each other's *interests*. Identifying interests is a critical step in the integrative negotiation process. Interests are the underlying concerns, needs, desires, or fears that motivate a negotiator to take a particular position. Fisher, Ury, and Patton explain that while negotiators may have difficulty in satisfying each other's specific positions, an understanding of the underlying interests may permit them to invent solutions that meet each other's interests.

Types of Interests Lax and Sebenius (1986) have suggested that several types of interests may be at stake in a negotiation and that each type may be intrinsic (the parties value it in and of itself) or instrumental (the parties value it because it helps them derive other outcomes in the future).

Substantive(permanent) or(very important) interests are related to focal issues that are under negotiation -economic and financial issues such as price or rate, or the substance of a negotiation such as the division of resources. These interests may be intrinsic or instrumental or both; we may want something because it is intrinsically satisfying to us and/or we may want something because it helps us achieve a long-range goal. Thus, the job applicant may want $40,000 both because the salary affirms her intrinsic sense of personal worth in the marketplace and because it instrumentally contributes toward paying off her education loans.

Process interests are related to how the negotiation unfolds (announce).One party may pursue distributive bargaining because he enjoys the competitive game of wits that comes from nose-to-nose, hard line bargaining. Another party may enjoy negotiating because she believes she has not been consulted in the past and wants to have some say in how a key

problem is resolved. In the latter case, the negotiator may find the issues under discussion less important than the opportunity to voice her opinions. Process interests can also be both intrinsic and instrumental. Having a voice may be intrinsically important to a group. it allows them to affirm their legitimacy and worth and highlights the key role they play in the organization; it can also be instrumentally important, in that if they are successful in gaining voice in this negotiation, they may be able to demonstrate that they should be invited back to negotiate other related issues in the future.

Relationship interests indicate that one or both parties value their relationship with each other and do not want to take actions that will damage it. Intrinsic relationship interests exist when the parties value the relationship both for its existence and for the pleasure or fulfillment that sustaining it creates. Instrumental relationship interests exist when the parties derive substantive benefits from the relationship and do not wish to endanger future benefits by souring it.

Interests in principle, certain principles concerning what is fair, what is right, what is acceptable, what is ethical, or what has been done in the past and should be done in the future may be deeply held by the parties and serve as the dominant guides to their action. These principles often involve intangible factors. Interests in principles can also be intrinsic (valued because of their inherent worth) or instrumental (valued because they can be applied to a variety of future situations and scenarios).

3 Generate Alternative Solutions

The search for alternatives is the creative phase of integrative negotiation. Once the parties have agreed on a common definition of the problem and understood each other's interests, they need to generate a variety of alternative solutions. The objective is to create a list of options or possible solutions to the problem; evaluating and selecting from among those options will be their task in the final phase.

Inventing Options: Generating Alternative Solutions by Redefining the Problem or Problem Set: The techniques in this category call for the parties to define their underlying needs and to develop alternatives to meet them.

Peter Carnevale has recently created an Agreement Circumflex that classifies potential agreements into four main types, each with two subtypes (see Figure 4.2). There are four important dimensions underlying this model. Each of these dimensions is discussed here, and the strategies consistent with them are identified. A more complex discussion of the strategies and an extended example to highlight each is in the next section.

1. Position Accommodation vs. Position Achievement

Positions achievement are achieved when each party gets exactly what they wanted in their initial demand. Strategies that achieve positions include expanding the pie and modifying the resource pie. This is in contrast to position accommodation when the parties receive a portion of their initial demand.

2. Achieve Underlying Interests vs. Substitute Underlying Interests

When underlying interests are achieved, the negotiators' interests are completely met. Strategies to meet underlying interests include bridging and cost cutting. Underlying interests may also be substituted, modified, or changed. Nonspecific compensation and super ordination are two strategies that change whether or not a negotiator's interests are met or modified in some way.

3. Simple vs. Complex

Some negotiation situations are quite simple in nature, such as a two- or three-item agreement to purchase items from a manufacturer. Other situations can be extremely complex, such as comprehensive lease agreements that cover multiple locations, sizes, and types of property. The strategies at the bottom of the Agreement Circumflex are more suited to simple situations, while the strategies at the top are more appropriate for more complex situations.

Quadrant III
Interest
Achievement

Complex

Simple

Type 6
Cost Cutting

Type 5
Bridge

Type 2
Logroll

Type 3
Modify

Quadrant I
Position
Accommodation

Quadrant II
Position
Achievement

Type 1
Compromise

Type 4
Expand

Type 8
Superordinate

Type 7
Compensate

Quadrant IV
Interest
Substitution

Person-Based
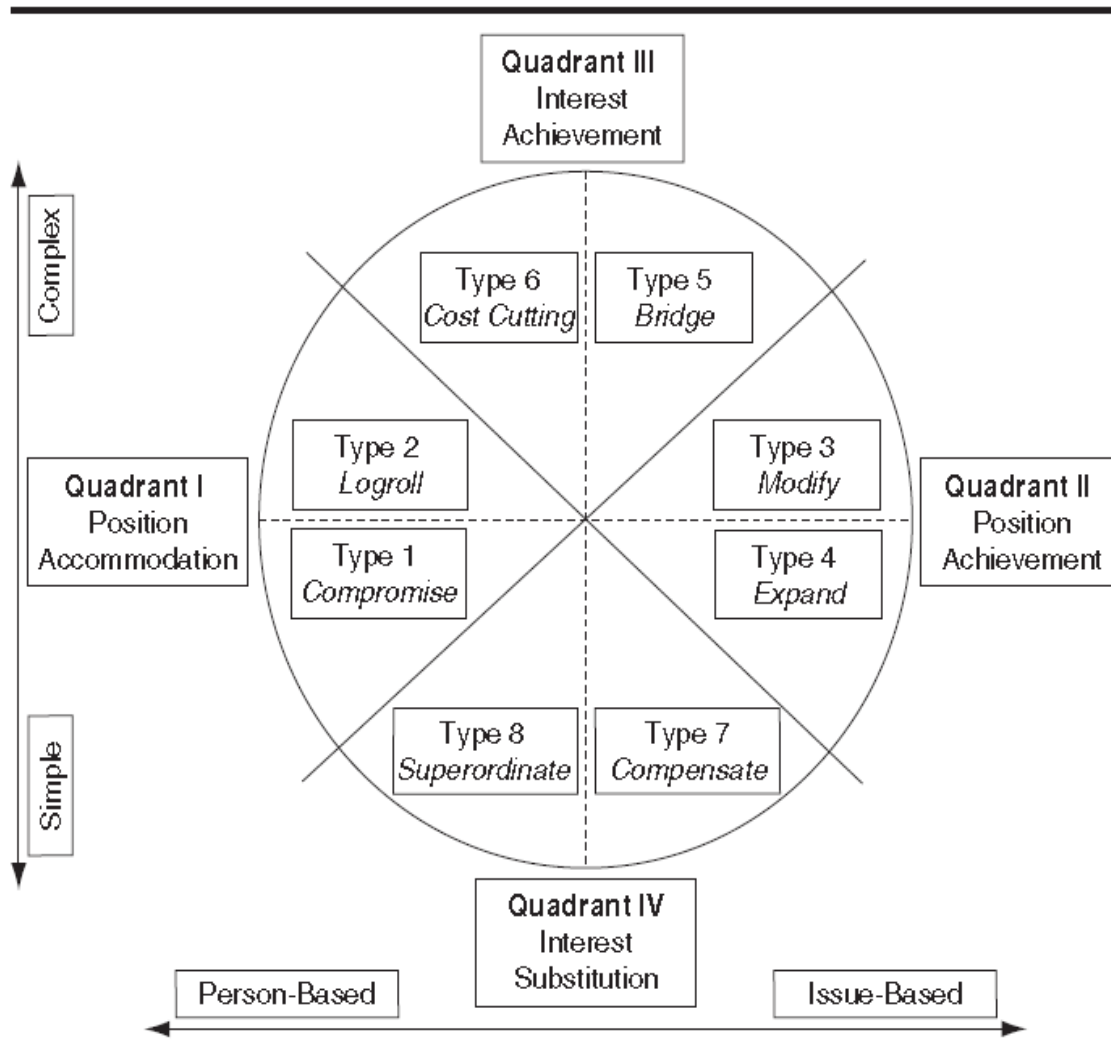
Issue-Based

4. Person-based vs. Issue-based

Person-based strategies involve having negotiators making concessions and changing positions such that an agreement is reached through modifying positions on the issues under discussion. Issue-based strategies modify the issues under discussion to fit them to the negotiators needs and desires. Person-based strategies are on the left side of the Agreement Circumflex, while issue-based strategies are on the right side.

Carnevale presents eight different methods for achieving integrative agreements in the Circumflex, which we discuss next. Each method refocuses the issues under discussion and requires progressively more information about the other side's true needs. Solutions move

from simpler, distributive agreements to more complex and comprehensive, integrative ones, and there are several paths to finding joint gain.

Compromise (Position Accommodation): A compromise solution that would not further the interests of either Samantha or Emma would be to stay in their current location and to maintain the status quo. Compromises are not considered to be a good integration strategy except for circumstances where parties are very entrenched and it is unlikely that a more comprehensive agreement is possible.

Logroll (Position Accommodation): Successful logrolling requires the parties to find more than one issue in conflict and to have different priorities for those issues. The parties then agree to trade off among these issues so that one party achieves a highly preferred outcome on the first issue and the other person achieves a highly preferred outcome on the second issue. If the parties do in fact have different preferences on different issues and each party gets his or her most preferred outcome on a high-priority issue, then each should receive more and the joint outcomes should be higher.

Modifying the Resource Pie (Position Achievement: While expanding the resource pie may be attractive, it does not always work because the environment may not be plentiful enough. For instance, the Advanced Management Consulting may not have enough demand for its services to have two offices. A related approach is to modify the resource pie.

Expand the Pie (Position Achievement): Many negotiations begin with a shortage of resources, and it is not possible for both sides to satisfy their interests or obtain their objectives under the current conditions. A simple solution is to add resources expand the pie such a way that both sides can achieve their objectives. For instance, the Advanced Management Consulting could lease offices both downtown and in the suburbs to serve both sets of its clients. A projected expansion of the business could pay for both leases. In expanding the pie, one party requires no information about the other party except her interests; it is a simple way to solve resource shortage problems.

Find a Bridge Solution (Interest Achievement: When the parties are able to invent new options that meet all their respective needs they have created a bridge solution. For instance, the Advanced Management Consulting could decide to expand the number of

partners in the firm and lease a larger space downtown, with new office furniture for everyone and a prestigious street address. Successful bridging requires a fundamental reformulation of the problem so that the parties are not discussing positions but, rather, they are disclosing sufficient information to discover their interests and needs and then inventing options that will satisfy those needs. Bridging solutions do not always remedy all concerns. Emma may not enjoy the commute and Samantha may not be convinced about growing the firm, but both have agreed that working together is important to them, and they have worked to invent a solution that meets their most important needs. If negotiators fundamentally commit themselves to a win–win negotiation, bridging solutions are likely to be highly satisfactory to both sides.

Cut the Costs for Compliance (Interest Achievement): Through cost cutting, one party achieves his/her objectives and the other's costs are minimized if He/she agrees to go along. Unlike nonspecific compensation, where the compensated party simply receives something for agreeing, cost cutting is designed to minimize the other party's costs for agreeing to a specific solution. The technique is more sophisticated than logrolling or nonspecific compensation because it requires a more intimate knowledge of the other party's real needs and preferences (the party's interests, what really matters to him, how his needs can be specifically met).

Nonspecific Compensation (Interest Substitution): Another way to generate alternatives is to allow one person to obtain his objectives and compensate the other person for accommodating his interests. The compensation may be unrelated to the substantive negotiation, but the party who receives it nevertheless views it as adequate for agreeing to the other party's preferences. Such compensation is nonspecific because it is not directly related to the substantive issues being discussed. For nonspecific compensation to work, the person doing the compensating needs to know what is valuable to the other person and how seriously she is inconvenienced (i.e., how much compensation is needed to make her feel satisfied). Emma might need to test several different offers (types and amounts of compensation) to find out how much it will take to satisfy Samantha. This discovery process can turn into a distributive bargaining situation, as Samantha may choose to set

very high demands as the price for locating in the suburbs while Emma tries to minimize the compensation she will pay.

Super ordination (Interest Substitution: Super ordination solutions occur when "the differences in interest that gave rise to the conflict are superseded or replaced by other interests". For instance, after extensive discussion about the office location Samantha may discover that she would prefer to follow her dream of becoming an artist and become a silent partner in the business. At this point, the office location negotiation stops and Emma chooses how she would like to proceed in the new business model.

3. Generating Alternative Solutions to the Problem as Given In addition to the techniques mentioned earlier, there are several other approaches to generating alternative solutions. These approaches can be used by the negotiators themselves or by a number of other parties (constituencies, audiences, bystanders, etc.). Several of these approaches are commonly used in small groups. Groups are frequently better problem solvers than individuals, particularly because groups provide more perspectives and can invent a greater variety of ways to solve a problem. Groups should also adopt procedures for defining the problem, defining interests, and generating options, however, to prevent the group process from degenerating into a win–lose competition or a debating event.

Brainstorming In brainstorming, small groups of people work to generate as many possible solutions to the problem as they can. Someone records the solutions, without comment, as they are identified. Participants are urged to be spontaneous, even impractical, and not to censor anyone's ideas (including their own). Moreover, participants are required not to discuss or evaluate any solution when it is proposed so they do not stop the free flow of new ideas. The success of brainstorming depends on the amount of intellectual stimulation that occurs as different ideas are generated. The following rules should be observed:

1. **Avoid judging or evaluating solutions**. Creative solutions often come from ideas that initially seem wild and impractical, and criticism inhibits creative thinking. It is important to avoid judging solutions early, therefore, and no idea should be evaluated or eliminated until the group is finished generating options.

2. Separate the people from the problem. Group discussion and brainstorming processes are often constrained because the parties take ownership of preferred solutions and alternatives. Because competitive negotiators assume an offensive posture toward the other party, they are unlikely to see the merits of a suggested alternative that comes from that party or appears to favor that party's position. It is often not possible to attack the problem without attacking the person who owns it. For effective problem solving to occur, therefore, negotiators must concentrate on depersonalizing the problem and treating all possible solutions as equally viable, regardless of who initiated them.

3. be exhaustive in the brainstorming process. Often the best ideas come after a meeting is over or the problem is solved. Sometimes this happens because the parties were not persistent enough. Research has shown that when brain-stormier works at the process for a long time, the best ideas are most likely to surface during the latter part of the activity. Generating a large number of ideas apparently increases the probability of developing superior ideas. Ideas, when expressed, tend to trigger other ideas. And since ideas can be built one upon the other, those that develop later in a session are often superior to those without refinement or elaboration. What difference does it make if a lot of impractical ideas are recorded? They can be evaluated and dismissed rapidly in the next step of the win–win process. The important thing is to ensure that few, if any, usable ideas are lost"

4. Ask outsiders. Often people, who know nothing about the history of the negotiation, or even about the issues, can suggest options and possibilities that have not been considered. Outsiders can provide additional input to the list of alternatives, or they can help orchestrate the process and keep the parties on track.

Surveys The disadvantage of brainstorming is that it does not solicit the ideas of those who are not present at the negotiation. A different approach is to distribute a written questionnaire to a large number of people, stating the problem and asking them to list all the possible solutions they can imagine. This process can be conducted in a short time. The liability, however, is that the parties cannot benefit from seeing and hearing each other's ideas, a key advantage of brainstorming.

Electronic Brainstorming: An innovative method for gathering ideas is to engage a professional facilitator and use electronic brainstorming (Gallupe and Cooper, 1993;

Dennis and Reinicke, 2004). The facilitator uses a series of questions to guide input from participants who type their responses anonymously into a computer that displays them to the group in aggregate. The facilitator may then ask additional probing questions. Electronic brainstorming may be especially useful for integrative negotiations that involve multiple parties or during preparation for integrative negotiations when there are disparate views within one's team.

4. Evaluate and Select Alternatives

The fourth stage in the integrative negotiation process is to evaluate the alternatives generated during the previous phase and to select the best ones to implement. When the challenge is a reasonably simple one, the evaluation and selection steps may be effectively combined into a single step. For those uncomfortable with the integrative process, though, we suggest a close adherence to a series of distinct steps: definitions and standards, alternatives, evaluation, and selection. Following these distinct steps is also a good idea for those managing complex problems or a large number of alternative options. Negotiators will need to weigh or rank-order each option against clear criteria. If no option or set of options appears suitable and acceptable, this is a strong indication that the problem was not clearly defined *(return to definitions),* or that the standards developed earlier are not reasonable, relevant, and/or realistic *(return to standards)*. Finally, the parties will need to engage in some form of decision-making process in which they debate the relative merits of each negotiator's preferred options and come to agreement on the best options. The following guidelines should be used in evaluating options and reaching a consensus.

- ➢ **Narrow the Range of Solution Options** Examine the list of options generated and focus on those that one or more negotiators strongly support.
- ➢ **Evaluate Solutions on the Basis of Quality, Standards, and Acceptability** Solutions should be judged on two major criteria: how good they are and how acceptable they will be to those who have to implement them. To the degree that parties can support their arguments with statements of hard fact, logical deduction, and appeals to rational criteria, their arguments will be more compelling in obtaining the support of others.

- ➢ **Agree to the Criteria in Advance of Evaluating Options** Negotiators should agree to the criteria for evaluating potential integrative solutions early in the process.

- ➢ **Be Willing to Justify Personal Preferences** People often find it hard to explain why they like what they like or dislike what they dislike. When asked "Why do you like that?" the reply is often, "I don't know, I just do."

- ➢ **Be Alert to the Influence of Intangibles in Selecting Options** One party may favor an option because it helps satisfy an intangible gaining recognition, looking strong or tough to a constituency, feeling like a winner, and so on.

- ➢ **Use Subgroups to Evaluate Complex Options** Small groups may be particularly helpful when several complex options must be considered or when many people will be affected by the solution.

- ➢ **Take Time Out to Cool Off** Even though the parties may have completed the hardest part of the process generating a list of viable options they may become upset if communication breaks down, they feel their preferences are not being acknowledged, or the other side pushes too hard for a particular option. If the parties become angry, they should take a break.

- ➢ **Explore Different Ways to Logroll** Earlier we discussed a variety of ways to invent options. The strategy of logrolling is effective not only in inventing options but also as a mechanism to combine options into negotiated packages. Neale and Bazerman (1991) identify a variety of approaches in addition to simply combining several issues into a package. Three of these relate to the matters of outcome, probabilities, and timing in other words, *what* is to happen, the *likelihood* of it happening, and *when* it happens.

   1. *Explore Differences in Risk Preference* People have different tolerances for risk, and it may be possible to create a package that recognizes differences in risk preferences.

   2. *Explore Differences in Expectations* As with differences in risk, differences in expectations about the likelihood of future events can permit the parties to invent a solution that addresses the needs of both.

3. **Explore Differences in Expectations** As with differences in risk, differences in expectations about the likelihood of future events can permit the parties to invent a solution that addresses the needs of both.

➤ **Keep Decisions Tentative and Conditional Until All Aspects of the Final Proposal Are Complete** Even though a clear consensus may emerge about the solution option(s) that will be selected, the parties should talk about the solution in conditional terms—a sort of *soft bundling.*

Minimize Formality and Record Keeping until Final Agreements Are Closed Strong integrative negotiators do not want to lock themselves into specific language or written agreements until they are close to an agreement. They want to make sure they will not be firmly held to any comments recorded in notes or transcripts.

4.4 Factors That Facilitate Successful Integrative Negotiation

We have stressed that successful integrative negotiation can occur if the parties are predisposed to finding a mutually acceptable joint solution. Many other factors contribute to a predisposition toward problem solving and a willingness to work together to find the best solution. These factors are also the preconditions necessary for more successful integrative negotiations. In this section, we will review in greater detail seven factors:

1. The presence of a common goal.
2. Faith in one's own problem-solving ability,
3. A belief in the validity of the other party's position,
4. The motivation and commitment to work together,
5. Trust,
6. Clear and accurate communication, and
7. An understanding of the dynamics of integrative negotiation

1. **The Present of Common Objective or Goal**

When the parties believe they are likely to benefit more from working together than from competing or working separately, the situation offers greater potential for successful integrative negotiation. Three types of goals common, shared, and joint may facilitate the development of integrative agreements.

Common goals: One that all parties share equally, each one benefiting in a way that would not be possible if they did not work together. A town government and an industrial manufacturing plant may debate the amount of taxes the plant owes, but they are more likely to work together if the common goal is to keep the plant open and employ half the town's workforce.

Shared goals-one that both parties work toward but that benefits each party differently. For example, partners can work together in a business but not divide the profits equally. One may receive a larger share of the profit because he or she contributed more experience or capital investment. Inherent in the idea of a shared goal is that parties will work together to achieve some output that will be divided among them. The same result can also come from cost cutting, by which the parties can earn the same outcome as before by working together, but with less effort, expense, or risk. This is often described as an "expandable pie" in contrast to a "fixed pie".

A *joint goal* involves individuals with different personal goals agreeing to combine them in a collective effort. For example, people joining a political campaign can have different goals: one wants to satisfy personal ambition to hold public office, another wants to serve the community, and yet another wants to benefit from policies that will be implemented under the new administration. All will unite around the joint goal of helping the new administration get elected.

2. **Faith in One's Problem-Solving Ability**

Parties who believe they can work together are more likely to be able to do so. Those who do not share this belief in themselves and others are less willing to invest the time and energy in the potential payoffs of a collaborative relationship, and they are more likely to assume a contending or accommodating approach to negotiation. If a negotiator has

expertise in the focal problem area this strengthens her understanding of the problem's complexity, nuances, and possible solutions.

3. A Belief in the Validity of One's Own Position and the other's Perspective

In distributive bargaining, negotiators invest time and energy inflating and justifying the value of their own point of view and debunking the value and importance of the other's perspective. In contrast, integrative negotiation requires negotiators to accept both their own and the other's attitudes, interests, and desires as valid.

4. Motivation and Commitment to Work Together

For integrative negotiation to succeed, the parties must be motivated to collaborate rather than to compete. They need to be committed to reaching a goal that benefits both of them rather than to pursuing only their own ends. They should adopt interpersonal styles that are more congenial than combative, more open and trusting than evasive and defensive, more flexible (but firm) than stubborn (but yielding). Specifically, they must be willing to make their own needs explicit, to identify similarities, and to recognize and accept differences. They must also tolerate uncertainties and unravel inconsistencies.

5. Trust

Although there is no guarantee that trust will lead to collaboration, there is plenty of evidence to suggest that mistrust inhibits collaboration. People who are interdependent but do not trust each other will act tentatively or defensively. Defensiveness means that they will not accept information at face value but instead will look for hidden, deceptive meanings. When people are defensive, they withdraw and withhold information.

6. Clear and Accurate Communications

Another precondition for high-quality integrative negotiation is clear and accurate communication. First, negotiators must be willing to share information about them. They must be willing to reveal what they want and, more important, must be willing to state why they want it in specific, concrete terms, avoiding generalities and ambiguities. Second, the other negotiators must understand the communication. At a minimum, they must understand the meaning they each attach to their statements; hopefully, the parties each interpret the basic facts in the same way, but if they don't then they should reconcile them.

7. Understanding of the Dynamics of Integrative Negotiation

Negotiators frequently assume that the distributive bargaining process is the only way to approach negotiations. Several studies indicate that training in integrative negotiation enhances the ability of the parties to negotiate interactively. For example, Weingart, Hyder, and Prietula (1996) demonstrated that training negotiators in integrative tactics—particularly in how to exchange information about priorities across issues and preferences within issues, and how to set high goals significantly enhanced the frequency of integrative behaviors and led the parties to achieve higher joint outcomes. This study also found that using distributive tactics, such as strongly trying to persuade the other of the validity of one's own views, was negatively related to joint outcomes.

4.5 Why Integrative Negotiation is Difficult to Achieve

Integrative negotiation is a collaborative process in which the parties define their common problem and pursue strategies to solve it. Negotiators do not always perceive integrative potential when it exists or cannot always sustain a productive integrative discussion. People frequently view conflict-laden situations with a fundamentally more distrustful, win–lose attitude than is necessary. The approach that individuals take toward conflict and negotiation is essential to understanding the differences between distributive bargaining and integrative negotiation. The primary reason negotiators do not pursue integrative agreements is that they fail to perceive a situation as having integrative potential and are primarily motivated to achieve outcomes that satisfy only their own needs. Four additional factors contribute to this difficulty:

1. The history of the relationship between the parties,
2. The belief that an issue can only be resolved distributive,
3. The mixed-motive nature of most bargaining situations, and
4. Short time perspectives.

1. The history of the relationship between the parties,

The more competitive and conflict-laden their past relationship, the more likely negotiators are to approach the current negotiation with a defensive, win–lose attitude. Long-term opponents are not likely to trust each other or to believe that a cooperative gesture is not a

ruse or setup for future exploitation. Because the other party has never shown any genuine interest in cooperation in the past, why should the present be any different? Laboratory research shows that negotiations that had an impasse in a previous negotiation were more likely to reach impasses on subsequent negotiations on different topics, even if the other party was a different negotiator.

2. A Belief That an Issue Can Only Be Resolved Distributively

Conflict dynamics tend to lead negotiators to polarize issues or see them only in win–lose terms. In addition, negotiators may be prone to several cognitive biases or heuristic decision rules that systematically bias their perception of the situation, the range of possible outcomes, and the likelihood of achieving possible outcomes, all of which tend to preclude negotiators from engaging in the behaviors necessary for integrative negotiation.

3. The Mixed-Motive Nature of Most Negotiating Situations

Purely integrative or purely distributive negotiation situations are rare. Most situations are mixed-motive, containing some elements that require distributive bargaining processes and others that require integrative negotiation.

4. **Short Time Perspectives**

Effective integrative negotiation requires sufficient time to process information, reach true understanding of one's own and the other party's needs, and to manage the transition from creating value to claiming value.

Review questions

True or False

1. Integrative Negotiation usually focuses on commonalties rather than differences.
2. The first step in the Integrative Negotiation Process is to generate alternative solutions to the problem.
3. In a Relationship interest negotiation usually one or both parties value their relationship with each other and do not want to take actions that will damage it.
4. Compromises are not considered to be a good integration strategy except for circumstances where parties are very entrenched and it is unlikely that a more comprehensive agreement is possible.
5. The presence of a common goal and a belief in the validity of the other party's position are factors that facilitate successful integrative negotiation.

Answer the following Questions

1. Define Integrative negotiation and compare with distributive bargaining
2. What are the four key steps in the integrative negotiation and which step is tough and need high preparation?
3. Why negotiator in integrative bargaining concern mainly to expand the Pie. What are its merits for the negotiators?
4. What are factors that facilitate successful integrative negotiation?
5. Briefly explain person-based and issue-based negotiation

Self Check 4

No	Do students grasp Objectives / Competencies	Yes	No
1	Do you understand the basic elements of an integrative negotiation situation?		
2	Have you realized the strategy and tactics of integrative negotiation?		
3	Could you consider the key factors that facilitate successful integrative negotiation?		
4	Have you gain an understanding of why successful integrative negotiations are often difficult to achieve?		

CHAPTER FIVE

PERSUASION

Learning Objectives

After successful completion of this chapter, students would be able to:

 - Discuss with Persuasion and different persuasion techniques
 - Know the Tactics and Ethics of Persuasion
 - Understand a new model in the Psychology of Persuasion
 - Recognize ways of increasing influence

5.1 Persuasion and Persuasion Techniques

5.1.1 Persuasion

Different scholars have defined persuasion in different ways. For example Persuasion according to communication scholars, is:

- a communication process in which the communicator seeks to a desired response from his receiver;

- a conscious attempt by one individual to change the attitudes, beliefs, or behavior of another individual or group of individuals through the transmission of some message;

- a symbolic activity whose purpose is to effect the internalization or voluntary acceptance of new cognitive states or patterns of overt behavior through the exchange of messages;

- a successful intentional effort at influencing another's mental state through communication in a circumstance in which the persuade has some measure of freedom;

Combining these definitions we have can have the following definition:

Persuasion is a symbolic(example) process in which communicators try to convince other people to change their attitudes or behavior regarding an issue through the transmission of a message, in an atmosphere of free choice. Persuasion is a process of verbal and nonverbal communication that consciously attempts toinfluence people in their attitudes, opinions and behaviors, using ethical means that enhance anopen society and an atmosphere of free choice. Persuasion is intentional communication that seeks to influence

people on the basis of both emotional presentations and rational arguments without the use of coercion, manipulation or propaganda. There are **five components** of the definition.

1. Persuasion is a symbolic process. Consists of a number of steps, and actively involves the recipient of the message. Many of them assume that persuasion is like a boxing match, won by the fiercest competitor. In fact persuasion is different. It's more like teaching than boxing. Think of a persuader as a teacher, moving people step by step to a solution, helping them appreciate why the advocated position solves the problem best. Persuasion also involves the use of symbols, with messages transmitted primarily through language with its rich, cultural meanings. Symbols include words like freedom, justice, and equality; nonverbal signs like the flag, Star of David, or Holy Cross; and images that are instantly recognized.

2. **Persuasion involves an attempt to influence.** Persuasion does not automatically or inevitably succeed. Like companies that go out of business soon after they open, persuasive communications often fail to reach or influence their targets. However, persuasion does involve a deliberate attempt to influence another person. The persuader must intend to change another individual's attitude or behavior, and must be aware (at least at some level) that she is trying to accomplish this goal.

For this reason, it pushes the envelope to say that very young children are capable of persuasion. These youngsters have not reached the point where they are aware that they are trying to change another person's mental state. Their actions are better described as **coercive(ymiysgedd) social influence** than persuasion. In order for children to practice persuasion, they must understand that other people can have desires and beliefs, recognize that the persuasion has a mental state that is susceptible to change, demonstrate a primitive awareness that they intend to influence another person, and realize that the persuade has a different perspective than they do, even if they cannot put all this into words. As children grow, they appreciate these things, rely less on coercive social influence attempts than on persuasion, and develop the ability to persuade others more effectively.

The main point here is that persuasion represents a conscious attempt to influence the other party, along with an accompanying awareness that persuade has a mental state that is susceptible to change and it is a type of social influence. Social influence is the broad process in which the behavior of one person alters the thoughts or actions of another. Social influence can occur when receivers act on cues or messages that were not necessarily intended for their consumption. Persuasion occurs within a context of intentional messages that are initiated by a communicator in hopes of influencing the recipient. This is attractive heady stuff, but it is important because if you include every possible influence attempt under the persuasion heading, you count every communication as persuasion.

3. **People persuade themselves.** One of the great myths(story telling) of persuasion is that persuadersconvince us to do things we really don't want to do. They supposedly overwhelm us with so many arguments or such verbal ammunition that we agree. People persuade themselves to change attitudes or behavior. Communicators provide the arguments. They set up the bait. We make the change, or refuse to yield you can't force people to be persuaded you can only activate their desire and show them the logic behind your ideas. You can't move a string by pushing it, you have to pull it. People are the same. Their devotion and total commitment to an idea come only when they fully understand and buy in with their total being.

You can understand the power of self-persuasion by considering an activity that does not at first blush seem to involve persuasive communication: therapy. Therapists undoubtedly help people make changes in their lives. But have you ever heard someone say, "My therapist persuaded me"? On the contrary, people who seek psychological help look into themselves, consider what ails them, and decide how best to cope. The therapist offers suggestions and provides an environment in which healing can take place.

But if progress occurs, it is the client who makes the change and it is the client who is responsible for making sure that she does not revert back to the old ways of doing things. Of course, not every self-persuasion is therapeutic. Self-persuasion can be benevolent or malevolent. An ethical communicator will plant the seeds for healthy self-influence.

Note also that persuasion typically involves change. It does not focus on forming attitudes, but on inducing people to alter attitudes they already possess. This can involve shaping, molding, or reinforcing attitudes, as is discussed later in the chapter.

4. **Persuasion involves the transmission of a message.** The message may be verbal or nonverbal. It can be relayed interpersonally, through mass media, or via the Internet. It may be reasonable or unreasonable, factual or emotional. The message can consist of arguments or simple cues, like music in an advertisement that brings pleasant memories to mind.

Persuasion is a communicative activity; thus, there must be a message for persuasion, as opposed to other forms of social influence, to occur. Life is packed with messages that change or influence attitudes. In addition to the usual contexts that come to mind when you think of persuasion advertising, politicalcampaigns, and interpersonal sales there are other domains that contain attitudealteringmessages. News unquestionably shapes attitudes and beliefs. Art books, movies, plays, and songs also have a strong influence on how we think and feel about life. Artistic portrayals can transport people into different realities, changing the way they see life.

Yet although news and art contain messages that change attitudes, they are not pure exemplars of persuasion. Recall that persuasion is defined as an attempt to convince others to change their attitudes or behavior. In many cases, journalists are not trying to change people's attitudes toward a topic. They are describing events to provide people with information, to offer new perspectives, or entice viewers to watch their programs.

In the same fashion, most artists do not create art to change the world. They write, paint, or compose songs to express important personal concerns, articulate vexing problems of life, or to mollify, uplift, or agitate people. In a sense, it demeans art to claim that artists attempt only to change our attitudes. Thus, art and news are best viewed as borderline cases of persuasion. Their messages can powerfully influence our worldviews, but because the intent of these communicators is broader and more complex than attitude change, news and art are best viewed as lying along the border of persuasion and the large domain of social influence.

5. **Persuasion requires free choice.** If, as noted earlier, self-persuasion is the key to successful influence, then an individual must be free to alter his own behavior or to do what he wishes in a communication setting. Philosophers have debated this question for centuries, and if you took a philosophy course, you may recall those famous debates about free will verb determinism.

Effects of Persuasion

Miller (1980) proposed that communications exert three different persuasive effects: shaping, reinforcing, and changing responses.

Shaping. Attitudes are shaped by associating pleasurable environments with a product, person, or idea.

Reinforcing: Contrary to popular opinion, many persuasive communications are not designed to convert people, but to reinforce a position they already hold.

Changing. This is perhaps the most important persuasive impact and the one that comes most frequently to mind when we think of persuasion. Communications can and do change attitudes.

☞ *Activity 5.1:*
1.   What do you mean by persuasion? Define from communication perspective.
_____
_____
_____

5.1.2 Persuasion Techniques

There are many techniques that can be used to persuade the other side. There is no single technique that is appropriate in all situations. Therefore, it may be appropriate to utilize more than one technique at any given time. If one technique is not working, it is best to be flexible and adopt another technique.

In assessing and developing these persuasion techniques, it is important to recognize what persuasion techniques the other parties (particularly the mediator) are intentionally or unintentionally utilizing as well. The following are some the major techniques.

Communicating persuasively-the use of language is the principal means of persuasion. Persuasion, however, includes not only the spoken word, but also body language, facial

expression, tone, and even silence. All are tools to be used in the negotiation process. Due to the volatility that can result from the spoken word, when possible, the delegation's statements should be well thought out, clear, and precise. Even the manner in which a person sits can communicate the way the person is feeling.

Self-Expression: Self-expression, the combination of language and demeanor, is another persuasion technique that can be effective in persuading the other party. This can be relevant, whether the delegation intends to express outrage, disappointment, frustration, or cooperation, or if the delegation intends to diffuse a hostile environment. The way the delegation expresses itself during the **negotiations** should be carefully designed to ensure that it has the intended effect. Examples of strategic use of self-expression include:

- The delegation may choose to use calm or reasoned language and demeanor to diffuse a hostile situation.
- Using expressive body language and more aggressive tones can express outrage; but simply saying the delegation is "outraged" is not an effective tool.
- Eye contact and facial expressions can convey significant messages.

Storytelling and Painting Pictures: Another technique for persuasion is the use of storytelling. This includes not only the spoken word, but also the use of visuals. One of the most effective ways to accomplish this is to place the other parties in your delegation's circumstances.

- Use vivid language to convey your delegation's message. Present your delegation's message in the context of a story that explains your delegation's perceived problem and demonstrates how your delegation's proposed action will solve the problem. For example, tell the story from the standpoint of an individual, family or community that has been or will be affected by the conflict at issue. Factual details are critical in the delegation's descriptions in order to achieve maximum effect.
- Consider presenting the delegation's problem visually by using words to paint a dramatic picture that incorporates the other parties' own experiences; this may help them begin to empathize with your delegation's position. For example, if unification is your delegation's goal, describe a peaceful and unified country.

- ➢ **Organizing For Persuasion:** In addition to the substance of an argument, the organization of an argument can have a significant persuasive effect. Therefore, your delegation will benefit from giving extensive consideration to organizing your delegation's points effectively. Typically, it is most effective to present your delegation's stronger argument first, and reserve arguments to use throughout the negotiations. For each argument, the following general rules should be applied:

  - Build your delegation's argument up from a strong factual foundation.

  - Draw the overall conclusion of your delegation's argument from the facts.

  - It may be important to begin with broad statements to define the scope of your delegation's arguments before proceeding with the specific items of your delegation's argument. Present specific subparts of the overall conclusions based on examples.

  - It is often the case that the first and last arguments made are those that are best remembered by the other parties.

Using questions to gate an advantage: There are several ways to use questions to gain an advantage in a negotiation. Ask open-ended questions to find out more about the other parties' positions. Open-ended questions can engage the other parties and make them feel more comfortable. This can allow the delegation to discover what is motivating the other party during the negotiation. Consider asking a series of non-confrontational questions to establish certain facts and to better define where the disagreement really is. This is effective in establishing an environment of cooperation.

Deciding on the emotion to convey: sharing concerns

Making Accusations: There is always more than one way to respond to the other parties' position oractions. Emotion, just like the spoken word, body language, facial expression andtone should be used thoughtfully and in accordance with your delegation's overallstrategic goal. The delegationshould never show an emotion unintentionally.

Your delegation can act aggressively by accusing the other delegation of wrongfulconduct or your delegation can tell the other delegation why their actions concernyour delegation. Either may be the appropriate way to begin the negotiation,depending on the factual circumstances.

Courtesy(politeness)

The decision to either extend or not extend politeness may be an effective persuasion technique. Generally, maintaining the proper courtesies will be the most effective way to open communications. The extension of appropriate courtesies not only encourages cooperative negotiations, but also typically results in a more sustainable long-term relationship between the parties. Extending courtesies does not mean that your delegation has to accede to the other parties demands. Regardless of whether your delegation intends to be courteous, it is necessary to understand the cultural expectations of the other parties to ensure that your delegation's actions will bring about their intended results.

Using themes in Communications

It is often helpful in a negotiation to present your delegation's position with a common theme throughout. It is more difficult for the other parties to disagree with a theme that has universal appeal.

Establishing "Common Ground"

Establishing agreements on certain points, even minor points, can serve as an effective starting point in persuading the other parties. Even small areas of common ground build trust between and among disagreeable parties.

Changing a conflict into a mutual problem-solving process

Nearly every conflict can be characterized as a common problem that needs to be solved by two or more parties who differ on the solution. Reframing a conflict in these terms can set a positive tone for negotiation - a tool that may allow agreement to be discovered where it might not otherwise be found. Sometimes during the course of negotiations, merely "reframing" the disagreement as a mutual problem can make the other parties feel that they are part of a team that shares the common goal of solving the problem. If presented as a conflict, other parties may be more likely to become defensive. For example, phrase the issue as, "We both have a problem that needs to be resolved," rather than "The delegation caused the problem." This may be more persuasive and result in shaping the conflict in a manner that is less adversarial.

Recognize and Reward Compromises By the Other Party

Recognizing or choosing not to recognize a compromise by the other party depends on the circumstances and can be an effective technique in persuading the other party. In any negotiation it is critical to recognize when the other party has made a concession or compromise. When a party makes a compromise, it rightly may expect something in return.

Whether the delegation chooses to reward the compromise is dependent, in part, on the value the delegation places upon the concession. The delegation may choose to recognize the compromise openly or recognize it only within the delegation's team. It is typically a mistake to over-emphasize the other side's concession as it may cause them to demand additional or more significant demands.

☞ *Activity 5.2:*

1. *Do you think that there is one best persuasion technique which is appropriate to all situations? (If yes, which persuasion technique is best?) If no, why?*

   _____

   _____

5.2 The Tactics and Ethics of Persuasion

Ethics are broadly applied in social standards for what is right and what is wrong in a particular situation, or a process for setting those standards. They differ from morals, which are individual and personal beliefs about what is right or wrong. Ethics proceed from particular philosophies, which purport to define the nature of the world in which we live, and to prescribe rules for living together.

Many of ethically questionable incidents in persuasion that upset the public involve people who argue that the ends justify the means – that is who deem it acceptable to break a rule or violate a procedure in the service of some greater good for the individuals, organizations, or even society at large.

According to (Hitt 1990) suggests that there are at least four standards for evaluating strategies and tactics in persuasion and negotiation:

- Make decision on the bases of expected result, or what would give us the greatest return on investment.
- Make decision on the bases of what the law says, on the legality of the matter.
- Make decision on the bases of the strategy and values of the organization.
- Make decision on the bases of personal convictions.

Each of these approaches reflects a fundamentally different approach to ethical reasoning. The first may be called *end-result ethics*, in this case the rightness of an action is determined by evaluating the pros and cons of its consequence. The second may be *called rule ethics*, in that the rightness of an action is determined by existing laws and contemporarily social standards that define what is right and wrong and where the line is. The third may be called *social contract ethics*, in that case the rightness of an action is based on the customs and norms of particular society or community. Finally, the fourth may be called *personalistic ethics*, in that the rightness of the action is based one's own conscience and moral standards

In assessing the ethicality of persuasive activities, we need to look both at the means of persuasion(the techniques used) and the ends (the results sought). Public relations scholars Benton Danner and Spiro Kiousis provide us with a "taxonomy of means and ends" that charts the possibilities in four categories.

1. You can engage in ethically justifiable persuasive acts in an ethical manner(good ends, good means). This type of act occurs in two manifestations:

- **A morally permissible act:** One in which the moral agent is neither required by ethics to perform the act nor prohibited ethically from performing the act; that is, to perform the action is moraland to not perform it is also moral. An example of a morally permissible act in the realm of public relations might involve apublic health campaign designed to persuade a public of the benefits of appropriatecardiovascular exercise. Although this is a good act, there is no obligation to perform it.

- **A morally obligatory act:** An act that the agent has a moral obligation to perform. To not perform the act would be unethical. For example: Suppose you are the vice president of public relations in a corporation that manufactures children's clothing. You have discovered information that conclusively shows that the children's pajamas manufactured by your company are highly flammable. As the public relations chief for

your company, you would have a moral obligation to not only attempt to persuade management to reveal this information (so that the danger can be publicized and appropriate recalls initiated), but that if you fail in the attempt to persuade superiors to reveal the defect, you would have a moral obligation to reveal the defect yourself (often referred to as "whistle blowing."

2. You can engage in persuasion that is ethically unjustified, but do so in an ethically proper manner (bad ends, good means). Although you could argue that the means justify the ends, you would be on shaky moral ground. For example, you could use ethical means of persuasion to attempt to convince others of the benefits of selling or using methamphetamines or crack cocaine. In other cases you could promote racism by using completely acceptable persuasive tactics say a speech in which all the oratorical techniques are ethically sound.

3. You could engage in unethical tactics of persuasion in a persuasive act that is itself morally justified(bad means, good ends). Because you are using morally suspect means toachieve a good end, you might be able to argue for the ethicality of the entire act; however,the questionable tactics would taint your achievement.For example, you might engage in lies in order to solicit donations for a charity that legitimatelyhelps the homeless. In addition to this Danner and Kiousis suggest another set of cases under this category that may be morallypermissible. These are instances in which the ends pursued are extremely significant forexample, the lives of a large number of people are at stake. For instance, would you lie to save thelives of a great many human beings? Our basic humanness would probably have us say yes tothis one.

4. **Neither the persuasive act itself nor the means employed in persuasion are morally permissible**(bad means, bad ends). Acts in this category will always be morally prohibited. For example, you could be employed by a tobacco company and engage in deceptive persuasive acts designed to entice children to start smoking.

Generally when the means and ends of a persuasive act are each morally sound, the overall act will be ethical. The act may be either ethically permissible(that is, ethics permits one to perform the act) or ethically obligatory(that is, ethics requires that one perform the act). When the persuasive means are unethical but the ends sought are ethically justified, the

ethicality of the act as a whole isn't as clear. The justification for using unethical means would have to be astrong one.When the means are ethical and the ends are not justified, an argument can be logically made in defense of the act, but bad ends are rarely justifiable. And when both the means and the ends of persuasion are ethically unjustifiable, then the persuasive act itself is unethical (that is, it would be unethical to perform the act).

Persuasion means employed can have cumulative effects on receivers thought and decision making habits apart from and in addition to the specific end that the communicator seeks. No matter what purpose they serve the arguments appeal, thinking habit, language patterns and level trust.

To say that the ends do not always justify the means is different from saying that the ends never justify means. The persuader's goal probably is best considered as one of the numbers of potentially relevant ethical criteria from which the most appropriate standards are selected under some circumstances such as threats to physical survival the goal of personal security may temporarily take precedence over other criteria. In general, however we can best make mature ethical assessments by evaluating the ethics of persuasive techniques apart from the wrong and morality of persuader's specific goal so we strive to judge the ethics of means and ends separately. In some cases we may find ethical persuasive tactics employed to achieve unethical goal. In other cases unethical techniques may be used in the service of an entirely ethical goal.

There are six questions suggested by Warren Bovee (1991) those can serve as use full probes to determine the degree of ethicality of all most any means – ends relationship in persuasion. These questions are listed below in paraphrased form:

1. Are the means truly unethical /morally evil or merely distasteful, unpopular, unwise or ineffective?
2. Is the end truly good or does it simply appear good to us because we desire it?
3. Is it probable that the ethically bad or suspect actually will achieve the good end?
4. Is the same achievable using other more ethical means if we are willing to be creative, determined and skillful?
5. Is the good end clearly and overwhelmingly better than the probable bad effects of the means used to attain it? Bad means require justification where as good means do not.

6. Will the use of unethical means to achieve a good end withstand public scrutiny? Could the use of unethical means be justified to those most affected by them or to those most capable of impartially judging them?

Ethical issues focus on value judgment concerning degrees of right or wrong and goodness or badness in human conduct. Persuasion as one type of human behavior always contain potential ethical issues for several reasons such as it involves one person or group of people attempting to influence other people by altering their belief, attitudes values and action, it involves conscious choices among ends sought and verbal means used to achieve the ends and it necessarily involves a potential judge any or all of the receivers, persuaders or independent observers.

As receiver and sender of persuasion, how you evaluate the ethics of persuasive instance will differ depending on the ethical standards. There are several justifications are often used to avoid direct analysis and resolution of ethical issues in persuasion:

- Everyone knows the appeal or tactic is unethical, so there is nothing to talk about
- Only success matters, so ethics are irrelevant to persuasion.
- Ethical judgments are matters of individual personal opinion so there are no final answers.

Tactics /Means/ of Persuasion

Social scientific research in persuasion showed that there are two major dimensions in source credibility expertise and trustworthiness, although dynamism, liking, similarity and physical attractiveness might also influence source credibility.

Information and Source Credibility:

- A means to enhance expertise: Information on background, formal training, education, personal experience, and knowledge on the subject.
- A means to enhance trustworthiness: legitimacy, speaking against one's own interest, endorsement.

Non-Verbal Communication and Source Credibility:

- Features that enhance expertise: fluency, facial pleasantness/smiling, facial expressiveness.
- Features that enhances trustworthiness: facial pleasantness/smiling, facial expressiveness.

Message Delivery and Source Credibility:

- Features that enhance credibility: pitch variation, citation of sources
- Features that diminish credibility: filled pauses, response latency

Attitude is based upon, or generated from, three general classes of information: cognitive, affective, and behavioral. Research is rapidly accumulating empirical evidence that persuasion is the result of both cognitive and affective processes. Hence, there are two general means to persuasion: rationalappeal and emotional appeal. A rational appeal uses logical arguments and factual evidence to persuadeindividuals that the advocacy is viable and likely to result in the obtainment of goals. An emotional appeal is designed to arouse emotions among the recipient and use the emotions as bases for persuasion.

Persuasion via rational appeal: The cognitive response tradition of persuasion posits that the persuasive effectiveness of a message is a function of the individual's cognitive responses to the message. If the overall cognitive response is positive, there will be persuasion; otherwise, the persuasive attempt fails or even boomerangs. Generally speaking, the success of a rational appeal thus depends on the strength and quality of arguments in the message, given that the recipient is able and motivated to process the message. Factual evidence can be in the form of statistics or personal testimonies. There is no evidence showing the advantage of one over the other. If either ability or motivation to process the message is low, recipients are less likely to scrutinize message arguments, but tend to be influenced by non-content features of message, for example, message modality, channel, source credibility, etc.

Persuasion via emotional appeal: The most widely applied emotional appeal in persuasion is fear appeal. The term is sometimes interchangeable with the term threat appeal when the emphasis is onthe informational content of the message, rather than the arousal it activates among the recipients.

Meta-analyses have demonstrated strong evidence for the effectiveness of fear appeals. There is also evidence that guilt appeal is persuasive.

• **Fear appeal:** A typical fear appeal message has two components: the threat component and the recommendation component. The threat component should present the risk information: the severity of the risk and the individual's susceptibility to this particular

risk. The recommendation component presents the recommended behavior to cope with the risk: the response efficacy, which refers to the effectiveness of the recommendation in removing the threat, and self-efficacy, which refers to the individual's capability to enact the recommended behavior.

• **Guilt appeal:** A typical guilt appeal message has two components: One presents materials to evoke guilt through drawing attention to some existing inconsistencies between the recipients' standards and actions, the other describes the recommended behavior or viewpoint, which is meant to offer the prospect of guilt reduction.

☞ *Activity 5.3:*
1. *Do you think that using unethical tactic of persuasion will always leads to unethical results? Why?*
_____
_____

5.3 A New Paradigm in the Psychology of Persuasion

The fact is, persuasion can be defined, learned and successfully incorporated into anyone's communication abilities. It doesn't matter if you work in sales, marketing, negotiation or another field directly related to persuasion.

We use the emotional parts of our brain to make rational decisions. Emotional context helps us make the best choices, often in a split second, long before the rational centers of the brain are even activated.

We respond to persuasive attempts either analytically or automatically. Those who respond analytically use a reasoned evaluative approach to come to a decision, but this requires enormous energy. The brain uses up reserves of glucose and calories whenever it evaluates. And because its human nature to conserve energy, most of us won't respond with the extra effort required to be analytical. In fact, most people slip into automatic-response mode whenever possible.

This doesn't mean you can skip logical arguments, but it does place less emphasis on reason and more on emotion. When you understand that people want to make rapid,

automatic and accelerated decisions, you can make it easier on those you're trying to influence.

5.4 How to Increase Influence

In 2009 and 2010, Innovative research was conducted to identify and measure influence styles. Thus created five categories:

- **Asserting (debating)**: you insist (claim) that your ideas are heard and you challenge the ideas of others.
- **Convincing**: you put forward your ideas and offer logical, rational reasons to convince others of your point of view
- **Negotiating**: you look for compromises and make concessions to reach outcomes that satisfy your greater interest
- **Bridging**: you build relationships and connect with others through listening, understanding and building coalitions.
- **Inspiring**: you advocate your position and encourage others with a sense of shared purpose and exciting possibilities

Each of these styles can be effective, depending upon the situation and people involved. A common mistake is to use a one-size-fits-all approach. Remember that influencing is highly situational.

Here are five steps to increase your influence.

1) **Understand your influencing style:** It all begins with self-awareness. What's your dominant style? Do you assert, convince, negotiate, bridge or inspire? Do you tend to apply the same approach to every situation and individual? Understanding your natural inclination is a good place to start. If you are not sure, consider taking a quick assessment.

2) **Take stock of your situation:**Who are the critical stakeholders you need to *win over* to achieve an objective or overcome an obstacle? What influencing style might be more effective as you interact with them? For example, if you are dealing with a hard-nosed CFO, consider using a convincing approach, which is based in logic, data and expertise. If you are in a crisis situation where people are relying on you to be decisive and fast on your feet, an asserting style may be more effective. If you're working

cross-functionally and need to win the support of a peer, a bridging or negotiating style may be the way to go.

3) **Identify your gaps:** Once you understand your natural orientation and the appropriate styles to influence those around you, figure out where you are on solid ground and where you need to shift gears and use a different approach to be more effective.

4) **Develop:** After identifying your gaps, find ways to develop in those areas. It might be a workshop, coach or internal role model who is particularly strong in the style you're trying to develop. For an added bonus, find a learning partner – someone with whom you can role-play to gain confidence.

5) **Practice:** Begin with small steps – low-stakes situations where you can test out your new influencing approaches. Target a person or situation where you'd like to achieve a certain outcome, think through the influencing style that will work best in that situation, and give it a try. See what works and what doesn't. As you build your capability and confidence, move on to higher-stakes scenarios.

Whether you are leading, following, and/or collaborating, chances are you need to influence others to be successful. Influence strategies can range from reliance on position to education, encouragement and collaboration. The main thing knows which approach is appropriate to a given situation.

☞ *Activity 5.4:*
1. Discuss with the five steps in increasing influence.
_____
_____

Review questions

True or false

1. Communicating persuasively is one of the techniques that helps negotiator to convince the two parties.
2. Trying to convince others through unethical means always resulted to unethical result.
3. Persuasion via emotional appeal is the most widely applied and persuasion process mostly emphasize on the informational content of the message, rather than the arousal it activates among the recipients.

Discussion questions

1. Write and discuss with different techniques of persuasion those used by persuaders in order to influence others effectively
2. What are the two general tactics for persuasion? List and explain them clearly
3. Write and explain the two manifestations for persuading others in ethical manner by using ethical means.
4. Do you think that using ethical persuasion tactics always will achieve ethical goals?
5. What is the effect of persuasion?

Self Check 5

No	Do students grasp Objectives / Competencies	Yes	No
1	Can you discuss persuasion and different persuasion techniques in detail?		
2	Do you know the tactics and ethics of persuasion?		
3	Have you understand a new model in the Psychology of Persuasion?		
4	Could you recognize ways of increasing influence on others?		

CHAPTER SIX
CONFLICT RESOLUTION

Learning Objectives

After successful completion of this chapter, students would be able to:

➢ Define conflict

➢ Understand about Conflict Resolution and Conflict Management

➢ Know the role of Mediator in conflict resolution through mediation

➢ Recognize the way that the mediator works in conflict resolution

6.1 Conflict Resolution and Conflict Management

Conflict may be defined as a struggle or contest(challenge) between people with opposing needs, ideas, beliefs, values, or goals. Conflict on teams is inevitable; however, the results of conflict are not predetermined. Conflict might escalate and lead to nonproductive results, or conflict can be beneficially resolved and lead to quality final products. Therefore, learning to manage conflict is integral to a high-performance team. Although very few people go looking for conflict, more often than not, conflict results because of miscommunication between people with regard to their needs, ideas, beliefs, goals, or values.

Conflict is a universal feature of human society. It takes its origins in economic differentiation, social change, cultural formation, psychological development and political organization – all of which are inherently conflictual and becomes overt through the formation of conflict parties, which come to have, or are perceived to have, mutually incompatible goals. The identification of the conflict parties, the levels at which the conflict is contested, and the issues fought over (scarce resources, unequal relations, competing values) may vary over time and may themselves be disputed. Conflicts are dynamic as they escalate and de- escalate, and are constituted by a complex interplay of attitudes and behaviors that can assume a reality of their own. Third parties are likely to be involved as the conflict develops, and may themselves thereby become parties in an extended conflict. An important point to note from the outset is how early theorists in the field such as Morton Deutsch (1949, 1973) distinguished between **destructive** and **constructive** conflict and suggesting that the former was to be avoided but the latter was a

necessary and valuable aspect of human creativity. This remains the key for understanding the normative orientation of the conflict resolution field as a whole, as will be emphasized below.

The new field of **conflict resolution** in the 1950s defined itself in relation to the challenge of understanding and transforming destructive human conflicts of this kind. In contrast to older established fields, such as international relations, conflict resolution was to be:

Multilevel: analysis and resolution had to embrace all levels of conflict: intra- personal (inner conflict), interpersonal, intergroup (families, neighborhoods, affiliations), international, regional, global, and the complex interplays between them;

Multidisciplinary: in order to learn how to address complex conflict systems adequately, the new field had to draw on many disciplines, including politics, international relations, strategic studies, development studies, individual and social psychology, etc.;

Multicultural: since human conflict is a worldwide phenomenon within an increasingly intricate and interconnected local/global cultural web, this had to be a truly cooperative international enterprise, in terms of both the geographical locations where conflict is encountered and the conflict resolution initiatives deployed to address them;

Both analytic and normative: the foundation of the study of conflict was to be systematic analysis and interpretation of the 'statistics of deadly quarrels, but this was to be combined from the outset with the normative aim of learning how better thereby to transform actually or potentially violent conflict into non- violent processes of social, political and other forms of change;

Both theoretical and practical: the conflict resolution field was to be constituted by a constant mutual interplay between theory and practice: only when theoretical understanding and practical experience of what works and what does not work are connected can properly informed experience develop.

Conflicts have been variously defined in relation to 'fights, games and debates. This remains controversial.

Conflict management is the principle that all conflicts cannot necessarily be resolved, but learning how to manage conflicts can decrease the odds of nonproductive escalation. Conflict management involves in acquiring skills related to conflict resolution, self-

awareness about conflict modes, conflict communication skills, and establishing a structure for management of conflict in your environment.

All people can benefit, both personally and professionally, from learning conflict management skills. Typically we respond to conflict by using one **of the five modes of conflict management**:

Competing conflict mode: is high assertiveness and low cooperation. Times when the competing mode is appropriate are when quick action needs to be taken, when unpopular decisions need to be made, when vital issues must be handled, or when one is protecting self-interests. Competing skills are Arguing or debating, using rank or influence, asserting your opinion and feeling, standing your ground and Stating your position clearly.

Compromising mode: is moderate assertiveness and moderate cooperation. Some people define compromise as "giving up more than you want," while others see compromise as both parties winning. Times when the compromising mode is appropriate are when you are dealing with issues of moderate importance, when you have equal power status, or when you have a strong commitment for resolution.

Avoiding mode: is low assertiveness and low cooperation. Many times people will avoid conflicts out of fear of engaging in a conflict or because they do not have confidence in their conflict management skills. Times when the avoiding mode is appropriate are when you have issues of low importance, to reduce tensions, to buy some time, or when you are in a position of lower power.

Accommodating mode: is low assertiveness and high cooperation. Times when the accommodating mode is appropriate are to show reasonableness, develop performance, create good will, or keep peace. Some people use the accommodating mode when the issue or outcome is of low importance to them. Accommodating mode can be problematic when one uses the mode to "keep a tally" or to be a martyr.

Collaborating mode: is high assertiveness and high cooperation. Collaboration has been described as "putting an idea on top of an idea on top of an idea…in order to achieve the best solution to a conflict." The best solution is defined as a creative solution to the conflict that would not have been generated by a single individual. With such a positive outcome for collaboration, some people will profess that the collaboration mode is always the best

conflict mode to use. However, collaborating takes a great deal of time and energy. Therefore, the collaborating mode should be used when the conflict warrants the time and energy.

Factors those affect conflict modes

Some factors that have impact how we respond to conflict are listed below with explanations of how these factors might affect us.

Gender: Some of us were socialized to use particular conflict modes because of our gender. For example, some males, because they are male, were taught "always stand up to someone, and, if you have to fight, then fight." If one was socialized this way he will be more likely to use assertive conflict modes versus using cooperative modes.

Self-concept: How we think and feel about ourselves affect how we approach conflict. Do we think our thoughts, feelings, and opinions are worth being heard by the person with whom we are in conflict?

Expectations: Do we believe the other person or our team wants to resolve the conflict?

Situation: Where is the conflict occurring, do we know the person we are in conflict with, and is the conflict personal or professional?

Position (Power): what is our power status relationship, (that is, equal, more, or less) with the person with whom we are in conflict?

Practice: Practice involves being able to use all five conflict modes effectively, being able to determine what conflict mode would be most effective to resolve the conflict, and the ability to change modes as necessary while engaged in conflict.

Determining the best mode: Through knowledge about conflict and through practice we develop a "conflict management understanding" and can, with ease and limited energy, determine what conflict mode to use with the particular person with whom we are in conflict.

Communication skills: The essence of conflict resolution and conflict management is the ability to communicate effectively. People who have and use effective communication will resolve their conflicts with greater ease and success.

Life experiences: As mentioned earlier, we often practice the conflict modes we saw our primary caretaker(s) use unless we have made a conscious choice as adults to change or adapt our conflict styles. Some of us had great role models teach us to manage our conflicts and others of us had less-than-great role models. Our life experiences, both personal and professional, have taught us to frame conflict as either something positive that can be worked through or something negative to be avoided and ignored at all costs.

Activity 6.1:
1. *What do you mean by conflict?*
   _____
   _____
   _____

2. *Does conflict have positive result? How?*
   _____
   _____

6.2 How Mediation Works

Mediation is an informal procedure in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of the conflict. It is a mechanism by which the disputants aim to come to a mutually agreeable solution to the conflict, rather than have a solution imposed upon them. The mediator, a neutral third party ideally with skills and training in this field, fulfils a role which includes facilitating constructive dialogue between the parties, helping them realistically assess their positions, and aiming to assist them in reaching a resolution.

Mediation is a non-binding procedure. This means that, even though the parties have agreed to submit a dispute to mediation, they are not obliged to continue with the mediation process after the first meeting. In this sense, the parties remain always in control of mediation. The continuation of the process depends on their continuing acceptance of it. The non-binding nature of mediation means also that a decision cannot be imposed on the parties. In order for any settlement to be concluded, the parties must voluntarily agree to accept it. Unlike a judge or an arbitrator, therefore, the mediator is not a decision-maker. The role of the mediator is rather to assist the parties in reaching their own decision on a settlement of the dispute.

Mediation is a confidential procedure. This confidentiality serves to encourage frankness and openness in the process by assuring the parties that any admissions, proposals or offers for settlement will not have any consequences beyond the mediation process. They cannot, as a general rule, be used in subsequent litigation or arbitration.

The parties and the mediator should sign a mediation agreement, for which there are standard precedents in covering areas such as:

- the mediator (if he/she is fulfilling a truly facilitative role) agreeing not disclose to one party his/her views on the merits of the other party's case;
- the outcome not being dictated by the mediator's decision;
- The mediation being conducted on 'without prejudice' basis, so as to enable each party to negotiate freely without fear that what they say within the mediation may be used against them in litigation, should the mediation break down and
- A confidentiality clause whereby the parties and the mediator agree to keep confidential issues arising from the mediation and terms of any settlement.

A mediation established along these terms could be described as 'facilitated negotiation'. The mediator may at the outset discuss the intended format with the parties. In a commercial mediation, this will typically include an introductory session with all parties present, then a series of discussions that the mediator talking with each party individually, gauging and managing their expectations, encouraging them to think laterally about the dispute, and discussing possible settlements. The parties may meet together again - perhaps a number of times with or without the mediator present, depending on the dynamics of the process. The aim is typically to conclude the process with the signing of a binding 'settlement agreement' which sets out the terms of the settlement by which the parties have agreed to abide.

With mediators and parties generally free to determine the format of mediation. The key factors likely to impact on the potential for a successful outcome are:

- The willingness and preparedness of the parties; and
- The skills of the mediator.

In respect of the former, it is important to define the key points at issue prior to the mediation (typically by parties exchanging, and sending to the mediator, 'position statements' beforehand), as well as to identify the goals of the mediation.

Regarding the skills of the mediator – currently there is no central regulatory body or (where privately appointed) any particular training requirements for mediators. Factors which may influence the parties' to choice mediator include word-of-mouth, professional reputation, cost, geographical location, availability, personality, experience, and allegiance to one or more of the various mediation organizations.

Problem-solving or principled approach in compromising through mediation

A. **Separating the people from the problem**: both parties see each other as standing side by side, attacking a common problem, rather than facing each other down and attacking one another

B. **Focusing on interests, not positions:** Here, they refer to the fact that negotiating positions are often arbitrary and encourage parties not to make concessions, even at the expense of what would eventually be a better outcome for them. The theory posits that focusing on interests will prevent this from happening and help both parties better to achieve what they actually want.

C. **Inventing options for mutual gain:** This is related to i) and ii) and entails thinking laterally, creatively and questioningly to identify shared interests opportunities to work together; and

D. **Insisting upon objective criteria**: This is designed to avoid the sense that one party is 'giving in' or surrendering to the other. Basing a solution on some arbitrary criteria stipulated by one party will leave the other party feeling hard done by. Basing the solution on objective criteria.

These approaches are open to the mediator and the parties whose negotiations he/she is facilitating are varied and numerous, it is clear that a mediator who successfully utilizes the above approaches (or more accurately enables the disputants to do so), will add value to the dispute resolution process. This illustrates a major strength of mediation. It is well-suited to situations where it is important to maintain good, or at least cordial relations between the disputants, for example companies in ongoing commercial relationship,

families or an employer and employee. The best case scenario would be that the mediation would actually improve the relationship.

More over mediation can also undertake with the **World Intellectual Property Organization's** (WIPO) Mediation Center (the Center) that offers alternative dispute resolution procedures to parties worldwide on a not-for-profit basis thus facilitating the resolution of IP (intellectual property**)** and commercial disputes**.**

How it Works: the Principal Stages in WIPO Mediation

There are few formalities associated with mediation. The structure that mediation follows is decided by the parties with the mediator, who together work out, and agree upon, the procedure that is to be followed. The main steps in the conduct of WIPO mediation can be described as follows. The procedure outlined should, however, be understood as being for guidance only, since the parties may always decide to modify the procedure and to proceed in a different way.

a. Getting to the Table: The Agreement to Mediate

The starting point of mediation is the agreement of the parties to submit a dispute to mediation. Such an agreement may be contained either in a contract governing a business relationship between the parties, or it may be specially drawn up in relation to a particular dispute after the dispute has occurred. For example parties can submit their agreement for existing disputes by stating "*We, the undersigned parties, hereby agree to submit to mediation in accordance with the WIPO Mediation Rules the following dispute: [brief description of the dispute] and the place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language]."*

b. Starting the Mediation

Once a dispute has occurred and the parties have agreed to submit it to mediation, the process is commenced by one of the parties sending to the Center a Request for Mediation. This Request should set out summary details concerning the dispute, including the names and communication references of the parties and their representatives, a copy of the agreement to mediate and a brief description of the dispute. These details are intended to

supply the Center with sufficient details to enable it to proceed to set up the mediation process.

c. The Appointment of the Mediator

Following receipt of the Request for Mediation, the Center will contact the parties (or their representatives) to commence discussions on the appointment of the mediator (unless the parties have already decided who the mediator will be). The mediator must enjoy the confidence of both parties and it is crucial, therefore, that both parties are in full agreement with the appointment of the person proposed as mediator. Typically, the Center would discuss the various matters such as the required qualifications of the mediator candidates and envisaged honoraries in order to be in a position to propose the names of suitable candidates for the consideration of the parties.

Following these discussions the Center will usually propose several names of prospective mediators, together with the biographical details of those prospective mediators, to the parties for their consideration. If necessary, further names can be proposed until such time as the parties agree upon the appointment of a mediator. The Center will also fix, in consultation with the mediator and the parties, the fees of the mediator at the stage of the appointment of the mediator.

d. The Mediator's Work with the Parties

Following appointment, the mediator will conduct a series of initial discussions with the parties, which typically will take place by telephone. At the first meeting, the mediator will establish with the parties the ground rules that are to be followed in the process. The mediator will also discuss with the parties what additional documentation it would be desirable for each to provide and the need for any assistance by way of experts, if these matters have not already been dealt with in the initial contacts between the mediator and the parties. Depending on the issues involved in the dispute and their complexity, as well as on the economic importance of the dispute and the distance that separates the parties' respective positions in relation to the dispute, the mediation may involve meetings held on only one day, across several days or over a longer period of time.

6.3 The Role of the Mediator

The mediators are a neutral third party who will go back and forth between the parties to attempt to help them reach an agreeable resolution to all or some of the pending divorce and child custody issues without the need for a hearing. All mediators are trained to be impartial and fair to all parties involved. Mediators hold all communications to them in confidence during the mediation process and will not be a witness for nor against either party in an arbitration hearing or in a court of law.

The mediator's roles are to:

- help people find the best way to resolve their problems
- encourage parties to identify the real issues
- help the parties explain those issues to each other
- identify points of agreement between the two parties
- help people find a way through their problem that may not seem immediately apparent
- work with people to find answers that reflect good faith and common sense
- provide an assessment of the risks of the problem escalating to the Employment Relations Authority
- Seek a resolution that allows both parties to put the issues behind them.

The process of all mediation will depend on the needs of the parties and the nature of the problem. Mediation services provide confidential processes where problems can be discussed, issues clarified and a conclusion reached that all those involved can accept.

Mediators can also:

- provide early assistance to parties with or without representatives being present
- make a written recommendation or decision with the agreement of the parties
- record settlements (including signing-off settlements reached outside mediation) so they become full and final and binding under the Employment Relation Act

- perform a range of legislative duties under the Employment Relations Act
- Provide information to unions, to community groups and advisors, to employer organizations' or employment law seminars.

More over mediators have ultimate role to do anything and everything necessary to assist parties to reach agreement. In serving this ultimate end, the mediator may take on any or all of the following roles:

Convener: Initiates the resolution process by encouraging parties to take part and working to remove obstacles which impede peacemaking activities.

Educator: The mediator educates the parties about the mediation process, other conflict resolution alternatives, issues that are typically addressed, options and principles that may be considered, research, court standards, etc. Provides expert opinion or technical information to parties about aspects of the conflict issues

Communication Facilitator: The mediator seeks to ensure that each party is fully heard in the mediation process. They Serves as the communication interface between parties involved in the process and those outside the process.

Translator: When necessary, the mediator can help by rephrasing or reframing communications so that they are better understood and received.

Questioner and Clarifier: The mediator probes issues and confirms understandings to ensure that the participants and the mediator have a full understanding.

Designer: Helps parties and interveners in creating a resolution process which will appropriately and effectively address the conflict issues.

Process Advisor: The mediator comes to be trusted to suggest procedures for making progress in mediation discussions, which may include caucus meetings, consultation with outside legal counsel and consultation with substantive experts.

Unifier: Helps with intra-party negotiations to repair divisions and assists them in creating a common understanding of the conflict and their goals and objectives

Angel of Realities: The mediator may exercise his or her discretion to play devil's advocate with one or both parties as to the practicality of solutions they are considering or the extent to which certain options are consistent with participants' stated goals, interests and positive intentions.

Catalyst: By offering options for considerations, stimulating new perspectives and offering reference points for consideration, mediator serves as a stimulant for the parties reaching agreement.

Responsible Detail Person: The mediator manages and keeps track of all necessary information, writes up the parties' agreement, and may assist the parties to implement their agreement.

Analyzer: Performs political, social or economic analysis of the conflict to assist other interveners in determining causes of conflict and courses of action.

Enskiller: Empowers parties with the skills required to negotiate, communicate interests, and analyze scenarios and research aspects of the conflict.

Decoupler: Finds ways for external parties who have become involved in the conflict to disengage while saving face and attempts to engage other external actors who can play less biased roles in endorsing the process or encouraging parties to participate.

Envisioner: Helps parties think about the conflict and give possible solutions in new ways by using creative option-generating processes or bringing in relevant data.

Evaluator: Helps parties assess possible solutions and their impact on the resolution of the conflict.

Guarantor: Ensures that parties do not incur unacceptable costs either through involvement in the process or if the process breaks down.

Enhancer: Brings in resources to expand the options for settlement or reward participation in the process.

Enforcer: Monitors agreements and codes of conduct so that momentum for the process can be sustained.

Reconciler: Prepares parties for long-term relationship-building activities which are designed to reduce patterns of negative behaviors, destructive stereotyping and miscommunication.

Why Use a Mediator?

The reason for using mediators is because of they have their own roles and duo to some other reasons. Some of the reasons are stated as the following:

- ✓ Because existing institutional arrangements or public arenas do not provide adequate space to build agreement and resolve disputes.
- ✓ Because a forum is needed to supplement existing institutional processes for shaping and implementing public policy.
- ✓ Because the participants have little experience or trust in working with one another.
- ✓ Because the numbers of issues under consideration are so great or complex that the participants are having trouble either organizing them or focusing upon one or two at a time.
- ✓ Because there are so many participants that conversation is cumbersome and a moderator is required.
- ✓ Because a deadlock in negotiations has occurred due to inflexibility of positions on substantive issues or problems such as false perceptions, poor communication, or intense feelings.
- ✓ Because there are no laws, rules, or regulations explaining how the issues should be handled.

6.4 When Negotiation Fails

What if we do not settle at mediation?

It is possible to attend mediation and not reach an agreement. The process of preparing for and attending mediation allow you insights to prepare for a hearing, which would not otherwise be obtained. Additionally, even though an agreement was not reached during the time allotted for mediation, it is still possible for the parties to continue to negotiate up until the hearing to try to resolve the issues, if desired. Not all cases that go to mediation are resolved through mediation and it is important to understand this in advance. It is also important to know that you do not have to accept an unreasonable offer at mediation out of fear of a hearing.

Review questions

Write true or false and try to justify why you say true or false

1. Getting to the table means the agreement of the parties to negotiate through midiation and it is the first stepe in WIPO mediation process.
2. Giving decision based on different information and justification that rises from two parties is one of the major role of midiators in conflict resolution throghmidiation.
3. Conflict management is the application of different principles to minimize the conflict that might created between two parties

Discussion questions

1. Discuss with principled methods used in negotiating conflict though mediation
2. Write and discuss with different modes in conflict management.
3. What is the role mediator in conflict resolution though mediation?
4. What are the factors those affect conflict modes?
5. What is the difference between conflict resolution and conflict management?
6. What are the principal stages in mediation though World Intellectual Property Organization's mediation center
7. Why the parties in conflict want to use mediators to settle their conflict?

Self Check 6

No	Do students grasp Objectives / Competencies	Yes	No
1	Can you define conflict?		
2	Have you understand about conflict resolution and Conflict management concept?		
3	Do you know the role of mediator in conflict resolution through mediation?		
4	Have you been familiar with the way that the mediator works in conflict resolution?		

CHAPTER SEVEN

INTERNATIONAL NEGOTIATION

Learning Objectives

After successful completion of this chapter, students would be able to

➢ Recognize Cultural Differences that Affect international Negotiations

➢ Understand negotiation strategies and objectives across cultures

➢ Examine guidelines when preparing for talks with someone from a different culture

7.1 International negotiation

Negotiation can be viewed in various ways: as a method of handling conflict, "a puzzle to be solved," or a "bargaining game involving an exchange of concessions."

Negotiation is a process of communication by which aimed at achieving specific goals where parties in conflict undertake to work together to shape an outcome and that meets their interests better than their best alternatives.

James E. Laue includes the *relationship* between parties in his definition, calling negotiation an "exchange of information, ideas, and promises by two or more parties with differing interests, with the aims of, first, developing a mutually acceptable resolution of their differences that is stable over time and, second, improving their ongoing relationship."[5] Parties do not always pay close attention to long-term relationships as they negotiate, so this consideration is not always included in general definitions. However, as we shall see, relationships are usually important to the successful implementation of an agreement, and tend to be particularly important in negotiation as an alternative to violence.

Negotiation is one of the most common processes of life, including international relations, yet governments and people should use but often fail to use it as effectively as they might. Some negotiation advice applies universally despite the globalization of business: Be clear on exactly which parties are involved, assess the full set of interests at stake, both yours and theirs, estimate each side's no-deal alternatives think through the role of time, envision value-creating deals, design agreements for sustainability, choose a process that productively manages the tension between cooperation and conflict, Sequence carefully, Act both at and away from the table to set up the most promising negotiation and so forth.

Cultural Differences that Affect international Negotiations

International negotiation can be affected by different factors however it is mostly affected by culture. Several aspects require careful study when preparing for an international negotiation. The following are the five major aspects deserve closer scrutiny:

1. Negotiation Objectives

Negotiation objectives should often obvious as the interactions follow a logical, factual approach. Obtaining lower-cost goods or services, gaining access to technology or intellectual property, extending one's influence on markets through alliances, negotiating the parties in conflict and so on, all share a common denominator: the underlying objective is near-to mid- term success. People are usually flexible and creative in finding ways to meet their objectives. Negotiators are prepared to 'slice and dice' the package of terms and conditions being negotiated, willing to make concessions if these help advance the negotiation as long as the overall value of the package still meets their objectives. Long-term aspects of a business relationship matter but play a secondary role.

Foreign negotiations can look quite different in contrast. For starters, long-term aspects of the engagement commonly weigh more heavily. Also, negotiators may have a less holistic view of the package being discussed. Let's say an Asian buyer is interested in buying equipment from an American company that requires extensive training and maintenance provisions. The initial negotiation may focus exclusively on the price of the equipment, in spite of efforts on the American side to use tradeoffs in training or maintenance cost to offset pricing concerns. The set of objectives on the Asian side may indeed include a specific price target, and they may not be willing to move on to negotiating other aspects before that target has been met. This sometimes becomes an issue of 'face', where not reaching their goal affects the self-esteem and reputation of the negotiators.

2. The Importance of Relationships

While some form of a working relationship is required for negotiations, it does not have to be extensive and shall usually be established quickly. In most cases, evidence that you are a valid business partner and an indication that you are willing to negotiate in good faith suffice.

Negotiations abroad usually require a lot of up-front relationship building,which is why Americans often complain that international deal-making can be painfully slow. In most of the cultures in Asia, Europe, and Latin America, strong relationships are not only important to ensure proper execution of an agreement but are a prerequisite forentering into any formal or informal negotiations. To varying degrees, people will want to learn about your company background and capabilities, prior experiences, strategies and objectives, long-term plans, and so on. They also want to get to know you personally before they decide to trust you. In several cultures, people don't want to conduct business with you unless you convinced them that you are seeking a long-term engagement rather than just 'pursuing a deal.'

Furthermore, realize that the definition of what constitutes a good relationship varies widely between cultures. In certain European countries such as the Nordics, the Netherlands, Germany, also in Israel, frank and direct exchanges indicate trust and a positive relationship, which is opposite to cultures such as China, where politeness and diplomacy are virtues and where there is little trust in 'objective' truths anyway. A puzzling fact in China may be that confidentiality is not a requirement of a trusting relationship, as many American companies have painfully experienced. Information is considered free and using it in one's best interest (which includes sharing it with other parties) is considered legitimate. Confidentiality agreements may not change that but will be read as signs of mistrust, hampering the relationship.

Lastly, it is important to know that the relative status of both sides can be different in a foreign culture. In the U.S., the seller-buyer relationship is usually one of near-equality which is win-win.

3. Decision Makers

Accordingly, inexperienced negotiators in international situations may suspect that forsome reason the 'right person' simply doesn't want to talk to them, thinking they are stuck with an intermediary with limited authority. The reality may be quite different: for example a 'decision maker' in the American sense, i.e., a person with the authority and willingness to make a direct decision may not exist at all. Decisions are made by groups in many cultures. 'The person at the top' still exists - organizations in these countries often

have powerful leaders and clear hierarchies. However, the role of that person is not so much to make decisions themselves, but rather to orchestrate and manage the process of how group decisions are being made and implemented. Since group decisions require a series of interactions between all parties to form opinions and establish consensus, they cannot be made right at the negotiation table. Sufficient time needs to be given between negotiation rounds for the group to go through iterations of the process and reach their conclusions.

4. Negotiation Techniques

People around the world are very creative when it comes to negotiating, bargaining, and haggling.

Americans may be at a slight disadvantage in this field, since people in manyother countries receive extensive negotiation training already as children, watching their parents bargain at the market or in a shop. Numerous negotiation techniques are used that would be considered unusual or exotic in America

5. Reaching Closure

When approaching the final stages of an international negotiation, you'll need to carefully look for clues that the other side is ready to close.

How closure itself works again varies greatly. The good old handshake, still in use in America but normally accompanied by signing a contract, works well to confirm agreements in countries such as Brazil, most Arab countries, India, and many others. That does not mean that no written agreement should be prepared, but it is advisable to consider the handshake, rather than the signature, the critical step, while the paperwork becomes a mere formality. The other side might be alienated if you focus too much on the written contract, feeling that you don't trust their word. In Japan, a signed written agreement is not important. Once both sides clearly stated and spelled out their agreement orally and then put it in the meeting protocol, you can be assured that they will follow it to the letter. Generally, you should not bring a legal counsel to any international negotiations.

☞ *Activity 7.1*
1. Discuss with how culture can affect international negotiation.

_____

_____

7.2 Making Deals in Strange Places

The challenge to understand the other party also exists in domestic negotiations. However,understanding strategies and objectives across cultures is much more difficult. Ignoring the need for culture-specific preparation is a deadly sin in any international business negotiation. There are many skilled and resourceful negotiators in the United States. Alas, without prior cross-cultural experience or preparation, most of them tend to assume that both sides share an implicit agreement over what represents legitimate negotiation tactics and that both sides believe in, or at least respect, the value of a win-win approach. Furthermore, they likely trust their ability to correctly interpret clues about where the other side stands in the decision making process.

In the sequence of preparing to negotiate across a national border, you should start as you wouldfor any negotiation—the parties, their interests, the no-deal options, opportunities for and barriers to creatingand claiming value, etc.This preparation should be informed and modified by four factors that aregrouped into two classes of potentially relevant cross-border assessments, the general and the negotiationspecific.

1. Learn about common expectations for surface behavior: etiquette, protocol, and deportment

A surface-level assessment informs one about local expectations concerning greetings, business cards, gift-giving, dress, punctuality, body language, table manners, and so forth.

2. Learn about deeper cultural characteristics and their implications for the negotiation process itself. Below the surface are characteristics such as whether a culture is focused on the individual orthe collective, the nature and importance of relationships, how personal space and the role of time areviewed, the extent to which authority and hierarchy are accepted, how ambiguity and risk are regarded,and so on. Extending this assessment to expectations that are more specific to the negotiationprocess itself generates several questions: Is there a view that negotiation is a collaborative processaimed at mutual advantage or a competitive battle? Should you focus on specific issues early on oris there a lengthy process of relationship building first? Is the process formal or informal? Is

communicationdirect or indirect? Are agreements constructed from general principles "down" or fromspecific provisions "up"? And so on:

Avoid cross-cultural fallacies. Just as you should not be unaware to culture, you should avoid cross-cultural fallacies: this can be through the following fallacies:

Stereotyping national cultures: Don't assume that nationality implies culture and that culture is monolithic. The variation within a national culture may be significant, often greater than the variation across different national cultures. And cultures can vary over time.

Overemphasizing national culture: National culture can behighly visible but is only one of many possible cultures (such as the professional cultures offinanciers, diplomats, or engineers) and only one of many other possible influences on negotiatedresults (such as the economics of the business, competitors, personality, regulation,technology, etc.). So don't assume that an assessment of national culture is the one completekey to understanding the other side and predicting its actions in a negotiation context.

The VFR at Night Fallacy: Falling prey to potent psychological biases in cross-culturalperception. Just as trying to pilot by "visual flight rules" (VFR) at night or in a storm is hazardous,the psychology of cross-cultural perception can be treacherous. Beware the witches'brew of biases and psychological dynamics that can bubble up when one begins to label "other"groups, attribute characteristics to them, and act on these perceptions.

St. Augustine's Fallacy: When in Rome, don't necessarily try to do what (you think) theRomans do; there may be much better options

3. Learn about the decision-making and governance processes you will seek to influence. Since you are typically seeking to cause an organization to agree with your proposal, what decision making and governance processes are involved? Who has what decision rights? Is it a one person authoritarian process? By consensus?A key subgroup?Formal?Informal?

4. Learn about the broader economic and political context for negotiation as well as salient "comparable" deals. Is there a government policy toward the kind of arrangements you areseeking to negotiate such as the requirement that the majority of a

joint venture be owned by a local partner? Are high-tech deals particularly sought-after by the state? What recent deals by others,successful or not, will be salient in the minds of your local hosts and authorities when they contemplate yours? Does the political ethos favor state control or privatization? Does a wrenching political transition foster managerial uncertainty and decision paralysis? In addition to these:

Deal with translators: in making Deals in Strange Places requiredeal with translators because the language of international business," a British executive once said to me, "is broken English." Fortunately for American negotiators, who usually don't speak a foreign language well, if at all, much of global business *is* conducted inEnglishLanguage.

Because translation complicates negotiation, executives should manage and plan for it as they would any other tactical element in dealmaking. (Palgrave Macmillan, 2003), JeswaldSalacuse has developed some simple rules that can help you negotiate more effectively in translation, four of which we summarize here.

1. **Hire your own translator, and make your choice carefully**. Except in cases where special reasons for trust exist, such as when you're negotiating with a longtime partner, do not rely on the other side's interpreter unless someone on your team understands the language and can check the translation. Before hiring an interpreter, try to determine her skill and experience from independent sources, such as the U.S. consulate or the local branch of a multinational bank. In many countries, the linguistic ability of people who call themselves "professional interpreters" varies considerably.

2. **Brief your translator before negotiations start**. Translators may be experts in languages, but they will rarely be experts in your business. Context gives words their meaning, but interpreters seldom will know the business context of your deal. For this reason, you should brief your interpreter beforehand on the background of the negotiation: the nature of your company, its business, and the deal you hope to arrange. You should also explain what type of translation.

3. **Stay on guard**. Some interpreters, because of personal interests or ego, will try to take control of negotiations or slant them in a particular way. This risk may be especially high if the interpreter also works as a middleman, agent, or business consultant and is hoping for future business opportunities from your deal. You need to guard against such power plays

by learning enough about your translator to determine potential conflicts of interest and by staying alert throughout talks to ensure that your translator is not adding in personal business advice.

4. be sure to "chunk" it. When you negotiate in consecutive translation, speak in short, bite-size chunks, pausing after each one to give the interpreter a chance to translate your words. Inexperienced negotiators can become so engrossed in delivering their message that they forget to pause, or do so only after making a very long statement. This can confuse the interpreter and contribute to inaccurate translations.

Consider the team approach: According to conventional wisdom, when it comes to negotiation, there's strength in numbers. Indeed, several experimental studies have supported the notion that you should bring at least one other person from your organization to the bargaining table if you can.

☞ *Activity 7.2*
1. How do you make deal at strange place with different culture?

_____
_____
_____

7.3 Rethinking the Culture-Negotiation Link

Culture profoundly influences how people think, communicate, behave and it affects the kinds of transactions they make and the way they negotiate and etc. National culture molds the personality of the negotiator and his or her expectations and views of the negotiation process. Additionally, cultural values direct attention to what is important and cultural norms define what appropriate and inappropriate behavior is. They provide a basis for interpreting situations and the behaviors of others during a negotiation. The values that generate cultural differences in preferences may also act as "cultural blinders". These blinders lead the members of one culture expecting preferences to be compatible, and being unable to understand the rationality of the other party, whose views on the same issue are at odds with their own. Furthermore, the norms and values of a society can be seen in a negotiator's implicit theory that helps him distinguish and prioritize his objectives

Even with a common language and the best of intentions, negotiators from different cultures face special challenges. So, they should try to follow these guidelines when preparing for talks with someone from a different culture:

1. **Research your counterpart's background and experience**. With a little homework, you should be able to learn who your negotiating partner will be and find out some details about her background and experience. If your counterpart has a great deal of international negotiating experience, you can probably assume that cultural stereotyping (and any effort to modify your negotiating strategyaccordingly) is likely to create new communication difficulties rather than solve old ones. If you have trouble getting information about your negotiating partner, ask an intermediary with contacts at that firm or organization to make inquiries for you. (Be sure the intermediary understands that he is not authorized to make any commitments on your behalf.)

2. **Enlist an adviser from your counterpart's culture**. If you discover that the person with whom you are likely to be negotiating has little or no international or cross-cultural experience, consider enlisting someone from his culture to serve as your "second" during the negotiation. Rather than deferring to this adviser during talks, plan out signals in advance to indicate when you should take a break for additional advice. In this manner, your cultural "guide" can help you size up the situation, coach you as needed, and even interject if he feels you have made an egregious error or misinterpretation.

3. **Pay close attention to unfolding negotiation dynamics**. Listen carefully during talks. If you're unsatisfied with the answers you receive, reframe your questions and try again. If you're unsure about what the other side said, repeat what you think you heard. It's safe to assume that people living and working in different cultural settings often view or interpret the same events differently. But in our era of globalization, it's also true that we have more in common on the person-to-person level than you might expect. Don't ignore your intuition, and mind your manners.

Practicing negotiators have ended to rely on the concept of culture or on related notions like national style, to explain behavior encountered as at the international bargaining table. Since the notion of culture as an explanatory tool holds culture for negotiation analysis, there are four distinct approaches in negotiation literature which impliesconnection between culture and negotiationbehavior these are

> ➤ Culture as learned behavior
> ➤ culture as shared value
> ➤ culture as dialectic
> ➤ Culture as context

1. Culture as learned behavior

The first approach in understanding the effect of culture concentrate on, documenting the systematic documenting negotiation behavior of people in different cultures rather than focusing on why members of a given culture behave in a certain ways. This pragmatic nuts and bolts approach concentrate on creating catalogue of behaviors that are foreign negotiator should expect when entering a host culture.

Each approaches differs from the other conceptually in significant ways with important consequences for understanding culture –negotiation connection

Culture as learned behavior: the variety of human experience daunted even the most precedent analysis. This variety has led observers to search for organizing principles that allow for valid generalization which hold true despite incidental variation from overall patterns.

The notion of culture has proven to be one base for generalization. Much literature use on diplomacy reports to generalization based on observed typical characteristics and behaviors of the inhabitants of particular geographic entity.

2. Culture as shared value

The second approach concentrate on understanding central value and norms of culture and then building a model for how these norms and values influence negotiationwithin the culture. Cross cultural comparison are made by finding the important norms and values

that distinguish one culture from the other and then understanding how these differences influence international negotiation.

While culture as learned behavior approach concentrate executively on behavior culture as shared value approach recognize that thought precedes behavior and seek to understand how culture influences through processes in general.

3. Culture as dialectic

The third approach to use culture to understand global negotiation recognizes that among their differences values all culture contain dimensions tension that are called dialectics. These tensions are nicely illustrated parables from judeo Christian.

The culture as dialectic approach has advantages over culture as shared value approach because it can explain variation within culture. Not every person in same culture shares the same value to some extent. While this may yield accurate academic understanding of effects of culture on international negotiation, it does not appear to offer clear guidelines for practitioners faced with negotiation across borders.

4. Culture as context

Proponents of fourth approach to use culture to understand negotiation across borders recognize that no human behavior is determined by single rather than all behavior may be understood at many different levels simultaneously and social behavior as complex as negotiation is determined by many different factors. One of which is culture. Other factors that may important determining of negotiation behavior include personality, social context and environmental factors.

In other words proponents of culture in context approach recognize that

Negotiation behavior ismultiply determined and using culture as the sole explanation of behavior is over simplifying a complex social process. Many academic models of negotiation recognize the multipledeterminations of negotiation behaviors and excellentguides for research and understanding negotiation. As the model becomes more complex however they may become less use full for practitioners of negotiation across border because they are just too complicated to put into practice.

☞ *Activity 7.3*
1. List and discuss with four approaches those indicate Culture-Negotiation Link

_____

_____

_____

_____

Review questions

1. Write and explain some features those require careful Study when preparing for international negotiation

2. What makes international negotiation different from national negotiation?

3. Write some guidelines those should be followed by negotiator while He talk with parties from different culture

4. What are the four approaches those indicate culture-Negotiation Link? (explain briefly)

Self Check 7

No	Do students grasp Objectives / Competencies	Yes	No
1	Do you recognize cultural differences that affect international negotiations?		
2	Have you realized negotiation strategies and objectives across cultures?		
3	Can you discuss guidelines when preparing for talks with someone from a different culture?		

CHAPTER EIGHT

CONTRACT MANAGEMENT

Learning Objectives

After successful completion of this chapter, students would be able to:

- ➢ Define contract and contract management
- ➢ Know the importance contract management
- ➢ Discuss with elements of contract administration
- ➢ Describe ways of administering consulting contracts
- ➢ Discuss with how to Manage Contractor Performance
- ➢ Explain about claim management
- ➢ Understand different dispute resolution mechanisms and how to manage arbitration

Introduction

Contract: The word contract can be defined in short as an agreement between the parties enforceable under the law. A contract is a legally binding agreement between the parties identified in the agreement to fulfill all the terms and conditions outlined in the agreement. A prerequisite requirement for the enforcement of a contract, amongst other things, is the condition that all the parties to the contract accept the terms of the claimed contract. One who is in charge of the project is known as the Employer. One who agrees to execute or perform is known as the Contractor.

Types of Contract

Contracts can be broadly classified as **Cash Contract, and BOT (**Built Operate and Transfer**) Contracts**. In cash contract the consideration for the agreement is payment in cash to the contractor as per the terms and conditions of the agreement by the Employer. In a Built Operate and Transfer type of project, the contractor invests the capital cost and consideration is recovery rights like toll, rent etc over an agreed period.

Contracts can be further classified as Service Contracts, Management Contract, Lease Contract, Divestiture, Sales Contracts (including leases), Purchasing Contracts, Partnership Agreements, Trade Agreements, and Intellectual Property Agreements Etc.

Service contract could be an agreement to provide agreed kind of services to the customer. Service delivery management ensures that the service is being delivered as agreed, to the required level of performance and quality. In civil engineering a routine maintenance contract for sweeping cleaning of Roads, Flyovers, security at site etc. are relative examples of the service contractor

Sales Contract is a contract between a company (the Seller) and a Customer that you are promising to sell products and/or services. The customer in return is obligated to pay for the product/services bought.

Purchasing Contract is a contract between your company (the Buyer) and a Supplier who is promising to sell you products and/or services.

Partnership Agreement may be a contract, which formally establishes the terms of a partnership between two legal entities such that they regard each other as „partners" in a commercial arrangement.

Lease Agreement is generally an agreement related to rights to enjoy property for certain period as per the terms and conditions of the agreement. A standard consideration is the agreed Lease rent. Typical example will be renting a flat, Advertisement permits etc.

What Is Contract Management?

Contract management "is the process of systematically and efficiently managing contract creation, execution and analysis for maximizing operational and financial performance and minimizing risk".Most of the time contract management refers to post-award activities but Successful contract management, is most effective if upstream or pre-award activities are properly carried out.

The central aim of contract management is to obtain the product as agreed in the contract and achieve value for money. Contract management may also involve aiming for continuous improvement in performance over the life of the contract. A key point is that the foundations for contract management are laid before contract award, in the procurement process other type of contract. The terms and conditions of the contract should include specifications, bill of quantities, contractor bonus, liquidated damages, time period, means to measure items executed, price adjustment procedures, variation/change

control procedures, foreclosure, termination, and all the other formal mechanisms that enable a contract to be implemented.

Increasingly, many organizations are departing from traditional methods of contract management and moving towards building constructive relationships with contractors. The following factors are essential for good contract management:

- **Good preparation of bid document**: A detailed estimate, project report of the work helps create a clear output-based specification. Proper eligibility criterion effective evaluation procedures and selection will ensure that the contract is awarded to the right person.

- **The right contract form**: The contract is the foundation for the project implementation. It should include aspects such as obligations of the parties, the quality assurance of items required, and defect liability period, as well as procedures for variations and dispute resolution. E.g. Lump sum contract, Item rate contract etc

Good contract management is proactive; it should aim to anticipate and respond to project needs. If contracts are not well managed from the employer side, any or all of the following may happen:

- ➢ The contractor is likely to neglect the quality, resulting in substandard product that is not durable and structurally unsafe
- ➢ Decisions are not taken at the right time – or not taken at all
- ➢ That leads to delays in payment, approvals - leading to claims
- ➢ Time and cost overrun

There are several reasons why organizations fail to manage contracts successfully. Some possible reasons include: Poorly drafted contracts, Inadequate resources assigned to contract management, Project team and the contractor team lacking skills or experience (or both), Inexperienced people being put in place, also leading to ego clashes, Contents, responsibilities and obligations of the contract are not well appreciated, Inadequate delegation of authority and /or responsibility, resulting in financial decisions not being taken in time, and Failure to monitor and manage retained responsibilities due to external interference and pressures from stakeholders.

Contract management consists of the full and proper fulfillment of roles and responsibilities. The main task areas are site management, adherence to specifications, and contract administration. The additional resources required to manage the contract depend on its scale, complexity and importance. For smaller contracts, the same individual may cover two or more areas: like, the contract manager takes on responsibility for administering the contract and supervision. Alternatively, a proper contract management team may be created in the employer organization.

Importance of contract management

Organizations in both the public and private sectors are facing increasing pressure to reduce costs and improve financial and operational performance.

New regulatory requirements, globalization, increases in contractvolumes and complexity have resulted in an increasing recognition of theimportance and benefits of effective contract management.

The growing recognition of the need toautomate and improve contractual processes and satisfy increasing compliance and analytical needs has also led to an increase in the adoption of more formal and structured contractmanagement procedures and an increasein the availability of softwareapplications designed to address these needs.

Managing long term contracts

For long-term strategic contracts, the emphasis on building proper records will be much greater. The costs involved in changing contractor are likely to be high and, in any case, contractual realities, and legal implications may make it very difficult and costly. It is in the organization's own interests to make the contract implementation successful. The three key factors for success are: Mutual trust, proper understanding of roles and openness and excellent timely communications, and a joint positive approach to managing the project.

Communication

The key to successful contract execution is clear and adequate communication between employer andcontractor at all times. The timely sharing of plans and communication of designs about future item executions can help ensure the parties develop confidence in the construction programs. This should be a two-way process. An important point is that the

arrangement should be that these levels of communication are preserved even when problems arise.

Contractors should realize that it would not be appropriate for them to go „to the top‟ and liaise directly with the top management, as it will undermine the contract manager. Similarly, it would be inappropriate for staff on the contractor side to complain about their internal grievances to the contract manager in the employer organization.

Good communication is an enabler of a particular culture between employer and contractor: one built on openness, trust and mutual interest. Communication will pave the way for more openness between the parties and the individuals involved in the contractual relationships. In addition, the way people get involved in the project and the attitudes they hold about other organizations, about the project, and about the concept as a whole, are crucial to the successful implementation of the contract.

Professional Consultants

Where contract management expertise is not available in-house, it may be appropriate to appoint professional consultants, or even appoint a professional contract manager. Such arrangements should be clearly defined in the construction contract to ensure that ownership of the arrangement as a whole continues to rest with the employer organization. The key contract management issues that are anticipated can be addressed in the contract conditions and specifications; they will also have a bearing on the subsequent procurement strategy of the employer organization.

The contract manager acts as the interface between the contractor and the employer organization in handling requests for incorporating variations into the contract. A preliminary investigation into the new requirement, possibly with the assistance of the contractor, will usually be required to determine whether it should be the formal change or otherwise. It is particularly important that additional works in the contract should be carefully controlled.

☞ *Activity 8.1:*
1. *What are the three factors those leads the contract to be successful in managing contract?*_____
_____

8.2 Contract Administration

Contract administration starts with developing clear, concise performance based statements of work. The statement of work should be the roadmap for contract administration. Therefore, planning for contract administration occurs prior to issuance of the solicitation. The goal of contract administration is to ensure the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. Effective contract administration minimizes or eliminates problems and potential claims and disputes.

The three key factors for success in contract administration are trust, communication, and recognition of mutual aims. Management structures for the contract need to be designed to facilitate effective implementation; staff involved at all levels must show their commitment to it. Information flows and proper communication should be stipulated at the beginning of a contract, and maintained throughout contract period. There should be set procedures for raising issues and resolving disputes, so that they are dealt with as early as possible and at the appropriate level in the organization.

Contract administration, the formal governance of the contract, includes such tasks as contract maintenance and change control, charges and cost monitoring, variation order process and payment procedures, management reporting, and so on.

The primary tasks of contract administration are to: Verify contractor performance for purposes of payment, Identify material breach of contract by assessing the difference between contract, performance and material nonperformance, Determine if corrective action is necessary and take such action if required, Develop completion plan for exit requirements for acceptance, final payment, and contract closure.

Contract administration will require appropriate resourcing. It may be that the responsibility falls on the contract manager. Otherwise the responsibility is shared across a contract management team. It is important that all members of the team deal promptly with contract administration tasks, during the various stages of implementation. Some typical procedures that combine to make up contract administration are as follows:

- Contract document maintenance and variation/change control
- Cost monitoring
- Variation ordering procedures

- Payment procedures
- Funding procedures
- Resource management and planning
- Management reporting

These procedures will need to be designed to reflect the specific works in the contract and the organization. It should be borne in mind that additional administrative procedures may also be needed. Contractual relationships develop and must respond to changes in the work environment. It follows that the contract document itself must be capable of evolving efficiently and effectively, through formal change control procedures and by mutual consent, in response to changing requirements. It is preferable to update documentation as changes occur rather than relying on informal arrangements.

Elements of Contract Administration

The contract must clearly stipulate provisions to enable required changes and pricing mechanism within agreed parameters, without needing to change the contract documentation or conditions. Procedures should be established to keep the contract documentation up to date and to ensure that all documents relating to the contract are consistent. For a large or complex contract, some form of change control procedure is needed. Applying document management principles involves:

- Identifying all relevant documentation (including contract clauses and schedules, procedures manuals etc.)
- Change control, variation procedures, and ensuring no changes are made without appropriate authorization from the competent authorities.
- Recording the status of every document (current/historic, draft/final)
- Ensuring consistency across various documents.

It may be noted that the specification and management of change control is an important area of contract administration as it leads to increase in cost and time of completion.

1. **Supervision**

The supervision of the project needs to be handled by an experienced team of persons or experts of relevant fields. For infrastructure contracts, there is a practice to invite bids from consultants with relevant experience. The bid document for the consultancy services typically comprise Terms of Reference (TOR), standard conditions of consultancy contract, period of completion, payment schedule etc. The TOR includes the type of personnel to be appointed by the consultant for the job and their qualifications, experience, period on the project (man-months) etc. The role of the supervision consultant is very crucial for the contract management and completion of the project. Apart from the day-to-day supervision, the Project Management Consultant (PMC) has to carry out documentation of the contract and the project. Generally, the entire correspondence with the Contractor is made through the PMC. It is therefore important to have a capable, qualified and experienced PMC on the job who understands the various provisions of the contract.

2. **Contract Monitoring**

The exact monitoring requirements and methodology will depend on the nature of the contract and the project to be completed. There are some standard practices that can apply. These include:

- Monitoring the contractor's performance against the specific targets and milestones laid down in the contract i.e. a particular milestone being reached in stipulated time
- Inspection of completed work or random sample checks
- The contractor providing information and reports on his own performance
- Regular review meetings held between the Employer and contractor
- Recording complaints received from client, specific systems may need to be set up where a good complaints or customer satisfaction procedure like ISO 9000 can be prescribed.

3. **Quality Assurance System-(QAS)**

In standard contracts, the Contractor is expected to institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system should be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit

any aspect of the system. Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself should be apparent on the document itself. Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4. Construction Program (CP)

Construction program in simple words is the activity chart of the contractor as to how he intends to complete the project within the prescribed time schedule. The contractor has to submit the CP immediately on commencement of the contract.

The progress of the contract is monitored with reference to the approved contraction program. Generally, monthly progress reports are to be prepared by the Contractor and submitted to the employer.In multiple copies. The first report shall cover the period up to the end of the first calendar month following the Commencement date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates. Reporting should continue until the Contractor has completed all work. Each report should typically include:

a) Charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor

b) Photographs showing the status of manufacture and of progress on the Site

c) For the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of: (i) commencement of manufacture,(ii) Contractor's inspections,(iii) tests, and (iv) shipment and arrival at the Site;

d) Details described in contract

e) copies of quality assurance documents, test results and certificates of Materials

f) list of notices given under contract [Employer's Claims] and notices given under contract [Contractor's Claims]

g)   safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and

h)   Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being adopted to overcome delays.

5.   **Effective Control**

Effective control ensures that both parties to fulfill their contractual obligations. The contract manager must record, co-ordinate and communicate what is and has happened with the contract. This information can then be used for forward planning and any future contracts likely to be undertaken. A skill that is required for effective control is the ability to identify problems that require corrective action. The types of problems that might occur are:

- Unsatisfactory performance
- Misunderstanding the requirement
- Inadequate   channels   of communication
- Changes to the contract, brought about by unexpected requirements

Contract control involves actively keeping the contractor's performance to the required standard. Participation by both parties is needed if this is to be successful, to enable any problems to be quickly identified and resolved. If monitoring indicates that a contractor's performance has deteriorated, action will need to be taken as provided in the contract. The nature of the action will depend upon the level of the under-performance or shortfall. If regular monitoring is effectively carried out, problems will be spotted early and the degree of any disruption from the target and corrective action will be minimized.

6.   **Extension of Time (EOT)**

Every contract provides for the extension of the time for completion of the project for reasons beyond the control of the contractor. For example it may be noted that in civil infrastructure contracts the land required for execution of the project is generally to be provided by the Employer. Similarly, there are various utility services in the city, like, electric poles, water supply lines etc. These are required to be shifted with the help of the Employer. The delays on this count are generally beyond the capacity of the contractor.

The contractor has to continuously report to the engineer delays occurring in the project, which entitles him for extension. The Engineer shall assess and determine the admissible extension to the contractor due to these delays. The Engineer shall satisfy that the delays are beyond the control of the contractor and he is entitled to the extension as per the provisions of the contract. In that case the Engineer shall notify the contractor and the Employer, the certificate of extension.

☞ *Activity 8.2:*
1. *List and discuss with different Elements of Contract Administration.*
   _____
   _____

8.3 Administering consulting contracts

Consulting Services is the practice of studying and advising a parties (agencies) in a manner not involving the traditional employee/employer relationship. To "study" means to consider some aspect of the agency in detail. To "advise" means to provide a recommendation or identify options with respect to some course of action. Generally, a true "consultant" delivers information or provides assistance that enables the agency to take some course of action. When a contract involves a mix of deliverables, it is considered a consulting contract only when consulting services, as defined above, are the primary objective of the contract.

A key factor in successful contract administration is communication. It is essential for contract administrators to understand the provisions of the contract, have the ability to communicate contract obligations to all parties involved, and maintain control over the contract performance. Contract managers must have sufficient knowledge of contracting principles as it relates to their responsibilities in administering the contract. (It is the contractor's responsibility to perform and meet the requirements of the contract. To do so, contractors sometimes need technical direction and approval from agency personnel. Agency personnel must provide this technical direction and approval in a timely and effective manner. All guidance provided to a contractor must be within the scope of the

contract. There should be contractors' consultant that provides additional advice regarding the principles and other related issues.

8.4 Filing Records and Audit

Records for inventory can be used to identify record series and locations which can sampled. More sophisticated, electronic inventories may themselves facilitate in built checking of records data held.

To be effective for use in this way, it is essential that the inventory itself remains reliable. Organizations' will need to regularly check the quality of their source data as well as for day to day identification and retrieval of desired records.

It is recommended that audits of both the quality of the records inventory and the consistency of applying destruction review processes are carried out annually. With respect to inventory quality, the audit should verify that the inventory is accurate and that all required information is captured. As part of this evaluation, the audit should also ensure that all records scheduled for destruction are identified or "tagged" on the inventory and that destruction dates are consistent with the disposal schedules laid down in the Code of Practice.

The word 'audit' is most often associated with an independent examination of financial records by external auditors or consultants, or the body or department undertaking this. In its broader context, 'audit' can be used to describe a review or scrutiny of any system, or of the processes that make up a system. The main purpose of an audit is to provide assurance that systems and processes are effective, compliant and risk free. It also provides a mechanism for regular scrutiny and improvement of systems.

Planning and preparing an audit

There is no best approach to auditing compliance with records management and organizations that will need to determine the most effective and appropriate approach for their particular organization. To be effective, however, all audits, no matter how large or small, should be planned, executed and reported on in as structured way as possible. This will ensure that:

- Responsibility for the audit is clearly defined.

- The scope and methodology of the audit is clear and the timing appropriate

- Resources required for the audit are available and at an appropriate level.

- Disruption to services is minimized

- Outcomes are identified and communicated and improvements made.

Establishing an audit program

Even if it is not essential that organizations draw up a formally documented program of audit, such a document may help to demonstrate how, when and by whom audits are to be undertaken. A documented program may also help organizations avoid duplication of effort and highlight gaps in the audit process.

In developing a program it may be helpful to recognize the different sources of audit available to, and already in operation in the organization and to consider work already agreed or scheduled for completion in the year.

Determining responsibility for audit

Individual responsibility for audits will vary, depending upon the type of audit undertaken. A number of bodies external to the organization currently undertake reviews that include assessment of some elements of records management against specific standards. These include the Healthcare Commission, the Audit Commission and other bodies supporting or governing professional practice. Records audits may also be included in the scope of an Internal or External Audit plan agreed with the Board or Audit Committee.

Where audits are undertaken at departmental level, the Departmental Manager or Director will remain responsible for overseeing the conduct of the audit and for ensuring that outcomes, including required improvements, are auctioned and reported.

Irrespective of the type of audit undertaken, or the body undertaking it, it is important that the officer assigned overall organizational responsibility for records management is aware of, or appraised of, the audits beforehand. It is also important that this officer is informed of the audit outcomes and co-ordinates and reports significant findings to the Information Governance Steering Group or any supporting records management sub-group.

The role of internal audit

Internal Audit is an independent and objective appraisal service within an organization. Despite the risks, records management is often conspicuously absent from the internal audit process, possibly because records are seen in the context of other systems rather than a discrete system associated with compliance, quality and risk management. Organizations will, therefore, need to engage with both Internal and External Audit to ensure that audit resources are directed in the most efficient and effective way. Internal Audit activity is likely to focus on areas of particular risk, as highlighted in the organization's risk register.

Auditable components of records management

The areas designated below are those likely to require some degree of audit scrutiny, whether this is through formal, planned internal audits or departmental or operational review. Whilst Internal Audit are likely to adopt their own methodology for carrying out formal audits, it is recommended that organizations undertake regular compliance reviews to see whether they have in place, are establishing, or have still to establish good practice in regard to managing their records.

Checklists have been provided within each area to help organizations carry out these reviews. The checklists can be used, or adapted as required for both clinical and corporate records and, if appropriate, to show where improvements are needed. The completed checklists can be used to:Inform reports to Records Management Groups or Information Governance Steering Committees and Demonstrate compliance with the Records Management Code of Practice,

Security and confidentiality of records

Confidentiality audits may focus on controls within electronic records management systems or on paper-based systems; the primary purpose of such audits is to discover whether confidentiality has been breached, or put at risk through deliberate miss-use of systems, or as a result of weak, non-existent or poorly applied controls.

All organizations should have automated processes in place to highlight actual or potential confidentiality breaches in their patient administration systems, e.g. audit trails, failed user log-ins, antivirus, spyware etc. and to evaluate the effectiveness of controls within these systems. Ensuring regular and effective audits are in place is an essential component of the

organizations board assurance and risk management process. It will also help organizations prepare for implementation of the Care Records System (CRS) which will introduce further automated control mechanisms, e.g. use of smart cards, electronic alerts and legitimate relationships (that restrict access to records to legitimate users only).Security and confidentiality audits on paper records systems may concentrate on training, evaluation of access/ storage arrangements and review of incident

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☞ *Activity 8.3:*
3. *What is the importance of planning for record and audit?*

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8.5 Changes to the contract requirements

A successful arrangement requires a mutual commitment to meeting evolving business requirements and adapting to changing circumstances. Reasons for change during contracts can come from a change of sources, both internal and external. Whatever the reasons, it is important to realize the implications of change for the contract and all parties involved. There could be implications or concerns in areas such as continuing value for money, and the possibility of moving beyond the original scope of the requirement. Change is easier to deal with when preparations are made. Not every possibility can be foreseen and planned for, but it is desirable that the contract includes some flexibility as well as the necessary procedures for handling changes. A properly managed change can be a good opportunity to alter or improve the project, prompted by:

- Significant revisions to the corporate strategy/business objectives of either party.
- Developments, changes in technology
- Public demand
- Change in the requirements of the Employer
- Changes in local legislations or development plans etc and Financial or other restraints

The importance of understanding the implications of change from the perspective of both parties cannot be overemphasized. Change to a contractual arrangement affects the scope, and thus the viability of the contract, for either or both parties.

☞ *Activity 8.4:*
4. *What are internal and external factors that leads to change of contract requirement?*
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8.6 Managing Contractor Performance

Performance management must be undertaken throughout the life of the contract and for all contracts, whether they are straightforward or complex. Along with performance indicators and standards, arrangements for monitoring and assessment should have been set out and agreed in the contract and contract management plan, along with action that would result from underperformance.

Clear links should have been established in the contract between payments for performance and the effect of non-compliance or underperformance on those payments, and the intent to invoke penalties contained in the contract if necessary.

Performance management involves:

➢ performance monitoring—collecting data on performance;

➢ performance assessment—deciding whether performance meets the entity's needs; and

➢ Taking appropriate action—such as understanding and extending features of good performance, correcting areas of underperformance, or amending the contract requirements to meet changing needs.

The performance monitoring and assessment arrangements should also have been reviewed at the contract start-up stage and any necessary plans, tools or systems developed.Systematic monitoring under pins performance assessment and they do not occur in isolation from one another. In practice, performance will be assessed and feedback and reports provided throughout the monitoring process.

Monitoring

Monitoring focuses on collecting and analyzing information to provide assurance to the acquiring entity that progress is being made in line with agreed timeframes and towards

providing the contract deliverables. As discussed in Part Two of this Guide, monitoring can be undertaken directly by the acquiring entity or through a third party arrangement.

Whether monitoring is undertaken directly by the acquiring entity or indirectly by another party, final accountability for accepting the contract deliverables remains with the acquiring entity. Information provided by a third party or the contractor for monitoring purposes should be reviewed and audited, as necessary, to ensure its accuracy and reliability. It can also often be tested through consulting end-users regarding the goods and services they have received.

While the broad arrangements for actual monitoring over the life of the contract should generally have been set out in the contract itself, they may need further or more detailed explanation at contract start-up or during the transition-in phase. The level and formality of any approach to monitoring needs to be governed by the complexity of the contract and/or the degree of risk involved. It may be appropriate to set up a contract management committee with the authority to make decisions and resolve issues. The approach taken to monitoring should be detailed in the contract management plan.

It is important to collect and analyze all the relevant information needed to assess performance.It is important to focus monitoring activity on the key deliverables; very detailed monitoring can be costly and can unduly shift the focus away from achieving the contract outcomes. This may mean establishing priorities for what will be measured at specific intervals.

Having a systematic approach to monitoring, which includes the sort of information required and when it is required, can assist in identifying any potential problems and allow early remedial action to be taken. It also allows timely reporting to senior management and other stakeholders. Obtaining relevant information and data may need to be supported by management information systems or databases. Some information may be able to be provided electronically.

In addition to data collected for the purpose of measuring performance, assessment of a contractor's performance can also be assisted by other information sources such as the

records or minutes of meetings and discussions, reports from third parties, stakeholder, end-user and client surveys, site visits and observations, complaints, reported delays and the need for contract variations.

Performance assessment

Performance assessment is undertaken on the basis of information collected during the monitoring process. It is important that during this process feedback is provided in relation to performance, and that any performance problems are addressed promptly.

The basis for performance assessment, that is, indicators with related targets and standards, should have been set out in the contract. Where performance information is difficult to establish at the contract development stage, it may require further development over the life of the contract. The contract provisions should have been framed to allow this. Developing the indicators further during contract management can draw on the actual results achieved, research and feedback from stakeholders.

For performance management to be most effective, responsibility needs to be shared between the contractor and the acquiring entity. From the acquiring entity's point of view, the primary responsibility for performance rests with the contract manager or team. It is in their interest to work actively and positively with the contractor to achieve outcomes in a value for money way. Performance management should ensure that standards and targets are met on time and within budget. It should also contribute to, not distract from, the contractor delivering the contract outcomes.

Revisions will need to be made if the data being collected is not providing adequate information to assess performance, performance measures have not been fully developed or are found not to be suitable for the particular contract. It is important not to change the arrangements to mask poor performance by the contractor or a lack of skill by the acquiring entity in collecting or analyzing performance data. Judgment will need to be exercised to determine whether changes or reinterpretations are needed.

Contract managers need to have assurance that the information used to assess performance, and to make or withhold contract payments, is accurate. This material will also be used to inform senior management and other stakeholders regarding progress. Inaccurate

information may mean that an understanding of actual performance is not being obtained and/or under-performance is being masked.

Once information is collected it should be analyzed to allow an assessment of specific or related matters, For example, under-performance may trigger the application of service credits or some similar action. Satisfactory performance may trigger payments of regular fees or milestone payments.

It is possible at this stage that technical advice may be needed to assess particular aspects of performance, for example, compliance with specified standards for construction work, or whether IT systems deliver the required functionality.

Good Practice Tip: Accessing technical advice

In managing the contract, if technical advice is likely to be required, consider pre-arranging access to this advice through a retainer or other similar arrangement. This can speed up access to advice when needed, and provide some continuity of understanding of the context in which the advice is required.

Reports provided to senior management and other stakeholders should be a balanced account of performance achieved and any identified shortcomings. If there are identified shortcomings, the proposed action and a timeframe to address them should be included in reports to senior management.

Honest and balanced feedback should be provided to the contractor. Where performance is satisfactory or above standard, positive feedback to the contractor can be beneficial to maintaining the relationship. It is also at this stage that any bonus or incentive payments linked to performance should be made in line with the contract provisions.

In cases where performance problems have been identified, they should be dealt with promptly. This means discussing the issues with the contractor in a professional manner as soon after they arise as possible. When performance problems are addressed as a normal part of contract management, it should not have an ongoing negative impact on the relationship between the acquiring entity and the contractor.In some cases, informal remedial action may need to be undertaken. In other cases, more formal action for underperformance may need to be taken and this is discussed below.

Underperformance

In many cases contracts are completed without problems, but contract managers need to be prepared to address any problems promptly as they arise in accordance with agreed procedures.

Many contract management problems can be avoided by managing the relationship well. Underperformance can be minimized by having a performance regime that allows prompt and ongoing feedback, particularly in relation to critical timeframes or deliverables. The contract manager needs to be aware of any signs of potential underperformance and be able to address them, to the extent possible, before they become serious. Addressing underperformance in this way can avoid the problem worsening and/or the contractor being confronted by a problem that the acquiring entity has known about for a period of time. Providing the contractor with early warning may make it easier to address the issues at low cost and with minimal disruption.

Depending on the seriousness of the underperformance, the action taken may need to be more formal and could include:

➢ withholding payments until performance returns to a satisfactory level;

➢ involving senior management from both parties in formal discussions or written communications;

➢ developing strategies to address the problem and formally documenting them, and tracking whether they are working in practice; and

➢ Implementing other formal mechanisms included in the contract.

☞ *Activity 8.5:*
1. *How can contract mangers manage contractors' performance?*

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8.6 Performance and Scheduling Management

Monitoring the performance of the contractor is a key function of proper contract administration. The purpose is to ensure that the contractor is performing all duties in accordance with the contract and for the agency to be aware of and address any developing problems or issues.

The Performance Schedule guide is the ratio of total original authorized duration versus total final project duration. This helps to enhance ability to accurately forecast schedule that helps to perform every activities timely in accordance with the schedule which may result:

Customer Satisfaction

Customer satisfaction means that customer expectations are met. This requires a combination of conformance to requirements (the project must produce what it said it would produce) and fitness for use (the product or service produced must satisfy real needs). The Customer Satisfaction Index is an index comprising hard measures of customer buying/use behavior and soft measures of customer opinions or feelings. Index is weighted based on how important each value is in determining customer overall customer satisfaction and buying/use behavior.

To manage cycle Time

There are two types of cycle time project cycle and process cycle. The project life cycle defines the beginning and the end of a project. Cycle time is the time it takes to complete the project life-cycle. Cycle timemeasures are based on standard performance. That is, cycle times for similar types of projects can be benchmarked to determine a Standard Project Life-Cycle Time. Measuring cycle times can also mean measuring the length of time to complete any of the processes that comprise the project life-cycle. The shorter the cycle times, the faster the investment is returned to the organization. The shorter the combined cycle time of all projects, the more projects the organization can complete.

Requirements Performance

Meeting requirements is one of the key success factors for project management. To measure this factor you need to develop measures of fit, which means the solution completely satisfies the requirement. A requirements performance index can measure the

degree to which project results meet requirements. Types of requirements that might be measured include functional requirements (something the product must do or an action it must take), non-functional requirements (a quality the product must have, such as usability, performance, etc.). Fit criteria are usually derived sometime after the requirement description is first written.

You derive the fit criterion by closely examining the requirement and determining what quantification best expresses the user's intention for the requirement.

Alignment to Strategic Business Goals

Most project management metrics benchmark the efficiency of project management—doing projects right.

You also need a metric to determine whether or not you're working on the right projects according to the schedule. Measuring the alignment of projects to strategic business goals is such a metric. It's determined through a survey of an appropriate mix of project management professionals, business unit managers, and executives.

The principles below are the foundation for performance and scheduling management. Every employeeshould incorporate many, if not all, of the principles into their daily work. The principles are intended as guidelines during the performance management process and are defined as:

1. **Service Excellence:** Supports an environment of service excellence, continually improving internal/external customer satisfaction through identification of needs and point of contact problem resolution.

2. **Quality Improvement and Safety:** Assists in creating and maintaining high quality processes using initiative and data as a foundation of the work. Ensures practices and procedures are conducted within regulatory guidelines and in the safest method possible.

3. **People:** Supports policies, systems and processes that create equal opportunities for all staff members. Fosters an environment where employees have the resources, assistance and support needed to achieve the highest personal and professional level.

4. **Financial Responsibility:** Uses resources and time effectively and efficiently, creating and maintaining a sense of organizational stewardship.

5. **Growth:** Supports the achievement of the organizations' strategic plan, mission and goals, contributing to its positive reputation and image both within the University community and in the general community.

6. **System:** Measures and continually improves processes, procedures, programs and services that enhance the ability to manage work flow across all systems, fostering teamwork, collaboration and integration wherever possible.

☞ *Activity 8.7:*
1. *What is the purpose effective performance management?*

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8.7 Claims Management

Written agreement between two or more parties that creates in each party an obligation to do or refrain from doing something and a remedy for such party's failure to fulfill the obligation. As used in this Policy Statement, references to "contracts" include, but are not limited to, agreements, terms and conditions, amendments, letters of agreement, letters of intent, statements of intent, memoranda of understanding, leases, interlocal agreements, interagency agreements and any other contract-related documents.

The contract should provide for the procedure for raising claims by the contractor. The main provisions for the claims can be-

- Notice of Claims
- Contractor to give notice to Engineer for claims
- Contractor to keep records of claims
- Payment of Claims
- Maintaining Audit Trail

Effective management of customer or supplier claims can have a significant positive impact on the financial situation of the business. Therefore, it is considered as Cost Improvement Best Practice.

Claim Management is where one contracting party makes a "claim" against the other party due to non-fulfillment of the obligations of an agreement (existing or implied) or where the basis of the agreement changes beyond what was thought to have been agreed. A brief example of each:

- **Non-fulfillment of Obligations**

If the obligation, that was stated on their contract (agreement) may not be full filled by one party due to different reasons. As a result of this the party who faces un-fulfillment of others obligation may claim to concerned body. For example: An airline contracts to purchase fuel for the next 12 months. However, the economy goes into recession and the airline only takes 80 percent of the agreed amount. In this case the fuel supplier may make a claim against its customer, the airline for a reduction in a volume rebate, which both companies had agreed.

- **Basis of Agreement Changes**

An automotive supplier contracts with its customer, a passenger car manufacturer, to produce a new type of LRD headlight. The design comes from the customer, but the supplier has to tool up its plant and hire additional employees to produce the lights.

However, due to a change in the vehicle safety regulations, these new lights are no longer permitted. The customer decides to switch to Xenon lights instead. The supplier must in this case impair the equipment already bought, and lay-off staff until the retooling of the plant is completed. In this case the supplier would have a solid claim against the customer, who probably should have known that regulatory changes were in the pipeline.

☞ *Activity 8.8:*
2. *What is the main objective of claim management?*

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8.9 Managing arbitration

Arbitrationmeansa binding procedure in which the dispute is submitted to one or more arbitrators who make a final decision on the dispute.It is a dispute resolution mechanism that provides diverse users worldwide with a neutral forum, a uniform system of enforcement and the procedural flexibility that allows parties to tailor-make a procedure to suit their needs in each case. With a joint commitment to efficient management by parties, outside counsel and arbitral tribunals, it can achieve a time- and cost effective resolution of

a dispute. Without that commitment, the opposite can be true: the very flexibility of arbitration can lead to increased time and cost.

Effective management of arbitration

Rules permit flexibility and do not specify precisely how arbitration is to be conducted. For example, there is nothing in theRules of Arbitration about the number of rounds ofbriefs, document production, and the examination ofwitnesses, oral argument, post-hearing memoranda orbifurcation. The open-ended nature of the Rulesenables the parties and the arbitral tribunal to tailor-make an effective procedure that suits the needs andparticularities of each case. However, when studying thematter, the Commission came to the conclusion that toooften the parties and tribunals do not tailor-make theprocedure at an early stage, but rather apply boilerplatesolutions or simply decide procedural matterspiecemeal as the case progresses. This was found toincrease time and cost in many arbitrations. Under thenew case management provisions in Articles 22−24 ofthe Rules, which are specifically designed to address that problem.

The process of tailor-making theprocedure has now become a formal requirement.Tailor-making the procedure so that the arbitration willbe faster and cheaper is not inherently difficult toaccomplish. The parties can agree upon faster andcheaper procedures and, failing their agreement, thearbitral tribunal has the power to determine suchprocedures after consultation with the parties. This willnormally be done at the first case managementconference. What is more challenging is determiningthe appropriate level of process and resources to matchthe value and complexity of the case. It is faster andcheaper to have one round of briefs rather than three, orto hold a three-day rather than a three-week hearing,but an extended opportunity to be heard will necessarilybe given up. It is less expensive and less burdensome topresent a witness by videoconference, but perhaps alsoless persuasive. The goal of each party is to present itscase in a manner that is most likely to persuade thearbitral tribunal to find in its favor. The time and costthat a party should be willing to devote to that end will varyaccording to the importance, complexity and value of thedispute. For each phase of the arbitration, cost/risk/benefit decisions have to be made.

Appropriate time and cost decisions can be made whenparty representatives have a collaborative relationshipwith outside counsel and actively participate in themaking of those decisions. Each party best knows itsown internal processes, the value of the underlyingtransaction and what is ultimately at stake. It is theparty's case, the party's risk and the party's money, sothe party itself is in the best position to decide whatlevel of risk to accept and what strategic decisions tomake. Outside counsel can assist in reaching suchdecisions on the basis of an informed evaluation of thepros and cons of the available alternatives. In addition,arbitral tribunals play an important role by bringing theirexperience to bear in devising cost-effective proceduresand encouraging all of the parties to assist in conductingthe arbitration in an expeditious and cost-effectivemanner, as contemplated by Article 22(1) of the Rules.

Case management considerations

As a general matter, party representatives shouldconsider the following when managing arbitration:

Early case assessment: Much time and cost can besaved by not litigating matters with low chances ofsuccess, or that are not worth the cost/time/distractionto its personnel. This should be analyzed before arbitration has begun; however, case assessmentshould also continue during the arbitration.

Maintaining realistic schedules: Setting up of a realisticschedule for the entire arbitration as early as possibleand sticking to that schedule, unless there are seriousreasons for not doing so, are essential to controlled and predictable proceedings. Parties will be able moreaccurately to foresee the date of the award and makeappropriate financial plans. The arbitral tribunal also hasan important role in establishing and maintaining arealistic schedule.

Establishing a tailor-made and cost-effectiveprocedure: Using this guide party representativealong with outside counsel can determine optimumprocedures from the party's perspective. The questionthen is how to implement those procedures. First, oneparty may consult with the other party with a view toreaching agreement on the applicable procedures. Anysuch agreement must be applied pursuant to the rules of arbitration. If the parties cannot agree on one or moreof the procedures, each can present

its position to thearbitral tribunal prior to or during the case managementconference. The arbitral tribunal will decide afterhearing the parties.

Awareness settlement procedures: Settlementprocedures such as mediation, neutral evaluation anddirect settlement discussions can occur at any time before or during arbitration. As an arbitrationprogresses, views on the case and parties' needs maychange, affecting the desirability and nature of apotential settlement. New facts may come to light, apartial award may be rendered, management changesmay occur, and new perspectives in relations betweenthe parties may emerge

Structure for arbitration management guide

This guide is composed of three main parts, each ofwhich is designed to assist in making effective time andcost decisions for an arbitration: first, a discussion ofsettlement considerations; second, a discussion of thecase management conference; and third, a series ofeleven topic sheets. Each topic sheet deals independently with a specificstep in the arbitration process where cost/risk/benefitdecisions need to be made. The topic sheets are notintended to cover every aspect of arbitration; rather,they are designed to provide a methodology fordecision-making. They may also serve as a tool to assistin making appropriate decisions on each topic. Thefollowing topics are covered:

- Request for arbitration
- Answer and counterclaims
- Early determination of issues
- Rounds of written submissions
- Multiparty arbitration
- Document production
- Need for fact witnesses
- Fact witness statements
- Expert witnesses
- Hearing on the merits
- Post-hearing briefs

Each topic sheet is designed to serve as an executivesummary and follows a standard format consisting of aseries of separate sections. The first section presentsthe topic and identifies the issue(s); the second sectionsets out the options available to the parties for thattopic; the third section discusses the pros and cons ofthe different options; the fourth section analyses thedifferent choices from a cost/risk/benefit perspective;and the fifth section lists useful questions that will helpto focus on the key decisions that need to be made. Thelist of questions could, for example, serve as a basis fordiscussion between party representatives and outsidecounsel regarding the choices that need to be made forthat particular phase of the arbitration. Where useful, afinal section contains other general points to consider.

The topic sheets are not prescriptive and do not provideany definitive answers but rather contain suggestionsthat can be used to stimulate discussion and decisionmaking. It is the hope of the Commission that thesetopic sheets will help in taking the appropriate cost/risk/benefit decisions that need to be made in order toconduct an expeditious and cost-effective arbitration,having regard to the complexity and value of thedispute.

Whether or not to settle

This is a complex question that will depend on each individual case. It is necessary to weigh the chances of success in arbitration against a series of factors including the costs, burden and distraction caused bythe proceedings and the time required to obtain theresult. The choice may be affected by matters ofprinciple or the need to eliminate financial or otheruncertainties.

Reasons not to settle: Various factors may militateagainst settlement. For example, a claimant may wish toobtain a precedent or guidance from a tribunal for use infuture cases or may consider that a given settlementoffer does not match the chances of success in anarbitration.

☞ *Activity 8.9:*
1. *What do you mean by arbitration and what is the role of arbitrator in dispute resolution through arbitration?*
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8.9 Dispute resolution

Dispute resolution mechanisms can be divided into the 'decisional' and the 'facilitative'. Decisional mechanisms, also termed 'dispute settlement' mechanisms, involve a neutral third

party imposing a solution or decision upon the disputants. Facilitative mechanisms are also termed 'dispute resolution' mechanisms and, if they involve a neutral third party, his or her function is to help the disputants reach a mutually acceptable solution.

Disagreements and misunderstanding are key characteristics of human relationships whether the relationship is a domestic, national or international one. The potential for disputes is even higher where the parties are from different cultural, economic and political backgrounds with different legal systems. Since disputes are such a critical part of human relationships, many countries have mechanisms to resolve them in a manner, which maintains the cohesion, economic and political stability of the state.

This is particularly so with regard to disputes related to commerce because commerce is the engine of growth.

The adjudicatory system of dispute resolution or the civil court system as we know it today evolved to resolve disputes among citizens. In each country of the world, the local court system has a history of development behind it but modern court systems all over the world have been influenced by the common law system which originated from England because England was at one time the dominant world power exporting its culture, ideas and system of governance to the rest of the world through the activities of its famous explorers.

Alternative Forms of Dispute Resolution

The shortcomings in the adjudicatory system of resolving disputes led to the emergence of other methods of dispute resolution now popularly referred to as ADR (**alternative dispute resolution**). The value of ADR over and above the common adjudicatory system is that any of the techniques can be implemented very early in the dispute thereby giving the parties an opportunity to air their views and to involve decision makers within their respective organizations long before the subject of dispute eats deep into the fabric of the relationship and cause irreparable damage.

ADR methods vary and their processes overlap but are all designed as alternatives to litigation and complement arbitration which is the most popular form of ADR. The methods include negotiation, early neutral evaluation or neutral fact finding, conciliation, mediation, mini trial, arbitration etc. The key factor is that all these methods are designed to assist the parties resolve their differences in a manner that is creative and most suited to the particular dispute. Some people see ADR methods as supplanting the adjudicatory system but if considered from the angle

that the courts in many jurisdictions are unable to resolve all disputes in a manner appealing to litigants, and then ADR methods will be accepted as complementary to the litigation system.

Negotiation

This is a voluntary and informal process by which the parties to a dispute reach a mutually acceptable agreement. As the name implies the parties seek out the best options for each other which culminates in an agreement. At their option, the process may be private. In this process, they may or may not use counsels and there is no limit to the argument, evidence and interests, which may be canvassed.

Early Neutral Evaluation/Fact Finding

This is an informal process whereby a neutral third party is selected by the disputants to investigate the issue in dispute and submit a report or come to give evidence at another forum like a court or arbitration. The outcome of a neutral fact finding is not binding but the result is admissible for use in a trial or other forum. The method is particularly useful in resolving complex scientific, technical, sociological, business or economic issue. Using a neutral fact finder eliminates the strategic posturing which characterizes the litigation or even arbitration process.

Conciliation

This mechanism is used to discover the whether there is room for the parties to a dispute to make up. A third party, the conciliator is appointed who discusses the dispute with the parties and then prepares a solution based on what he or she as the conciliator considers being a just compromise. The solution presented to the parties is reviewed with all relevant documents after which the conciliator meets with the parties separately for oral presentation of their cases. The conciliator may consult the parties privately as often as necessary to reach a solution. The proceedings are therefore flexible enough to accommodate this process. The conciliator tries to satisfy both parties. In doing this he or she looks for a consensus and while not dictating a solution to the parties, nevertheless crafts one for them. In effect, the conciliator may be regarded as designer of the solution. This may be contrasted with mediation where the parties are guided to design their own solution.

Mediation

Parties to a dispute seek mediation when they are ready to discuss a dispute openly and honestly. Usually in a dispute, there are varying degrees of interests and concerns therefore it is usual that

a tradeoff may be made in a creative manner which a court may not consider. The underlying factor in mediation is that the parties have bargaining power and that a continuing relationship is essential after the dispute therefore trial is to be avoided.

In view of the factors recounted above, a neutral party, the mediator, is brought in to help the parties find a solution to a dispute. The person controls the process while the parties control the outcome. A mediator cannot impose a decision on the parties. In a typical mediation session, the mediator opens the session by declaring how the session will run, who will speak, when, for how long and the length of the session. The parties are requested to confirm their good faith and trust in the process and to agree that all that will be said will be confidential and therefore inadmissible in any subsequent proceeding. After this, parties take turn to state their views of the dispute.

A successful mediation affords the parties an opportunity to generate a creative solution to their dispute in a manner that focuses on the future and not the past. Its major benefits include that they control the process, choose their mediator and avoid trial.

Mini-Trial

A mini-trial is a private abbreviated process of presentation by lawyers to the disputants to help them assess the strength and weakness of their positions and to help them reach a decision whether or not to proceed to trial. Usually there will be a third party advisor who renders a non-binding opinion about the legal, factual and evidentiary points of the case and what the outcome might be in court. The lawyers can then use this information to come to a conclusion. This is a two-part settlement process, which originates as mediation but may graduate to arbitration using the neutral party as the arbitrator who gives an award.

African Customary System of Dispute Resolution

Customary law is generally known to be the accepted norm of usage in any community. A community may accept certain customs as binding on them. In Africa, such customary laws may be accepted by members of particular ethnic groups and may be regarded as ethnic customary law. Customary law is unwritten and one it's most commendable characteristics is its flexibility, apart from the fact that it is the accepted norm of usage.

Resolution of disputes was a major function under the indigenous system of governance. The role was taken up by the elders or the chief and was meant to maintain social cohesion. In its operation, African dispute resolution was very much like arbitration in that resolution of disputes

was not adversarial. Any person who is concerned that a dispute between the parties threatened the peace of the community could initiate the process. In the process, parties have the opportunity to state their case and their expectation but the final decision is that of the elders. Whereas the western type arbitration is attractive because of its private nature, customary arbitration is not private but is organized to socialize the whole society, therefore, the community is present. Another distinction is that the process is gender sensitive as such women were excluded from male driven communal dispute resolution. Parties could arise from the whole process and maintain their relationship and where one party got an award the whole society was witness and saw to it that it was enforced.

Social exclusion or ostracism was a potent sanction for any erring party therefore enforcement of an award was not a problem.

There are however several limitations of this process in modern times. One is that it is mostly applied to land and family disputes. It is hardly applicable to monetized commercial transactions and certainly not to transaction of an international character.

Arbitration

Arbitration is one of the various methods of dispute resolution but undoubtedly the most popular. It is defined in the Halsbury's Laws of England as "the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.

Arbitration is a voluntary method of ADR, which is applied to both domestic and international contracts and is founded on the present or future agreement of the parties to submit any dispute between them to arbitration. By the above definitions it is clear that parties to a contract can choose to resolve any dispute which arises between them without reference to the regular courts. The reasons for sidelining the regular court for arbitration have been outlined above.

In the case of international commercial agreements there are other reasons of great importance why it is to be preferred. International arbitration as it is now well recognized developed after the Second World War and became popular as alternative to litigation in contracts where the parties came from different national backgrounds and one party was familiar with the legal system while the other was suspicious of it. In such situations, the only viable alternative was international arbitration. In other words, arbitration has the added advantage that in international contracts it gave the parties opportunity to choose a forum neutral from their own national legal systems.

The basis for proceeding to arbitration is the arbitration agreement or the arbitration clause, which has been voluntarily executed by the parties.

Characteristics of alternative dispute resolution (ADR)

When determining the appropriate means for resolving an IP or technology dispute, the parties should consider the following characteristics of ADR, particularly mediation and arbitration.

- **A single neutral procedure**: Many IP or technology disputes involve parties from different countries and relate to rights that are protected in several jurisdictions. In such cases, court litigation may well involve a multitude of procedures in different countries. Through ADR, the parties can agree to resolve their dispute under a single law (for arbitration) and in a single forum, thereby avoiding the expense and complexity of multi-jurisdictional litigation.

- **Party autonomy**: Because of its private nature, arbitration offers parties the opportunity to exercise greater control over the way their dispute is resolved. Depending on their needs, they can select streamlined or more extensive procedures, and choose the applicable law, place and language of the proceedings.

- **Neutrality**: Mediation and arbitration can be neutral to the law, language and institutional culture of the parties and thus avoid any home court advantage that one of the parties may enjoy in the context of court litigation, where familiarity with the applicable law and local processes can offer significant strategic advantages.

  - **Expertise:** The parties can select mediators and arbitrators who have special expertise in the legal, technical or business area relevant to the resolution of their dispute.

  - **Confidentiality:** The parties can keep the proceedings and any results confidential. This allows the focus to be kept on the merits of the dispute, and may be of special importance where - as is often the case in IP or technology disputes - commercial reputations and trade secrets are at stake.

  - **Finality of arbitral awards and party autonomy to settle**: Unlike court decisions, which can generally be contested through one or more rounds of litigation, arbitral awards are not normally subject to appeal. In mediation, the parties have the autonomy to settle their dispute. And

  - **Enforceability of arbitral awards**

☞ *Activity 8.10:*
1. List and explain different alternative dispute resolution mechanisms those help to settle dispute occurred between two parties.

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Review questions

Write true or false and try to justify why you say true or false

1. Underperformance is mainlly resulted from ineffective contract management and can be minimized by having effective performance manager that allows on-time and ongoing feedback.
2. Conciliator is a third party who discuss with the parties and will provide a final solution based on what he considers being just comprose them.
3. Claim can be created if any obligation that are stated in agreement is not fullfilled by only supplier side.

Short Answer Questions

1. What is the difference between contract management and contract administration? discuss briefly
2. What is the importance of contract management?
3. What are the two essential factors for good contract management?
4. Explain different document management principles in contract administration?
5. Write and discuss with the three main parts for arbitration management guide those designed to assist arbitration process to make time and cost effective decisions
6. What are the points those should considered by arbitrator in managing arbitration cases?
7. Write the some features of alternative dispute resolution mechanisms.

Self Check 8

No	Do students grasp Objectives / Competencies	Yes	No
1	Can you define contract and contract management?		
2	Do you know the importance contract management?		
3	Could you discuss with elements of contract administration?		
4	Have you understand ways of administering consulting contracts?		