A Guide to Effective Negotiations

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About this Book

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Feedback

Please share your adoption and any feedback you have about the book with us at oer@fanshawec.ca

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CHAPTER 1: MASTERING NEGOTIATION SKILLS

Chapter Overview

[1.1 Defining Negotiation]
[1.2 Key Negotiation Skills]
[1.3 The Impact of Negotiation Skills]
[1.4 Chapter Summary and Review]

1.1 Defining Negotiation

Learning Objective

1. Define negotiation and explain its importance in various professional and personal contexts.

The overall objective of negotiation is to help reach a mutually beneficial solution for both parties. Imagine buying a car and discussing the sale price and inclusions with the car dealership. Or picture yourself at a job interview, discussing the terms of your employment. Both are examples of negotiation discussions, and both scenarios involve finding a solution that works for both parties. The dealership wants to sell the car, and you would like to buy it; similarly, the organization would like to hire you, and you are interested in working for them – reaching an agreement would benefit both parties in these two scenarios. The less we focus on winning versus losing and the more we try to find solutions that work for both parties, the greater our chances of negotiation success.

Negotiations happen every day, all around us. They are not strictly confined to business scenarios but are a daily part of our lives. While every negotiation is unique, all negotiations will share four common elements or characteristics:

Two or more parties

Interdependent

Conflict of interest

Give and take

Let's dive into these characteristics a bit further. First, a negotiation needs to involve at least two parties with their own interests and objectives. We can think of a negotiation as a dance; as one party moves, the other party adjusts its response. It is all about finding a rhythm with the other party.

The parties are interdependent in that their actions will affect one another. There is a conflict of interest within each negotiation since the parties will have their own goals that may not align with the other parties' interests and objectives. Consider our example of buying a car. While making a deal will be mutually beneficial to both parties (the dealership would like to move the car, and the buyer needs a car), each party's interests compete (i.e. the dealer would like the highest price with the least inclusions, and the buyer wants the opposite!)

Finally, a negotiation is a two-way street. Parties need to be motivated to give and take so that they can reach a solution that is beneficial to both parties. Again, think about a dance; one party moves, and the other adjusts their response. And just like a dance, negotiation truly is much more than a skill – it is an art.

Image: OpenAI. (2024, July 9). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: *Create an image of two people dancing together, where the dress is teal, and the background is removed. Save as PNG file.*

1.2 Key Negotiation Skills

Learning Objective

2. Identify and describe key negotiation skills.

So, you want to master the art of negotiation? There are key skills that can help you achieve that. Consider a master negotiator as having a consultant-type role within the negotiation as we dive into the key negotiation skills.

Active Listening

One of the key skills for master negotiators is the art of active listening. **Active listening** is much more than simply hearing, it involves developing an understanding of the other party's position and interests. Before a consultant can propose solutions, they need to understand the client's needs and concerns; otherwise, their solutions will not satisfy what the client is truly looking for.

Communication

Communication is at the core of the negotiation process. But it is not just about what we say, but also how we say it. Both verbal and non-verbal communication are key players in effective negotiations. We need to know how to both create and deliver messages to the other party that will persuade and compel them to engage or continue to engage in the negotiation process.

Emotional Intelligence

Negotiations can be very emotional discussions. When parties agree to engage in a negotiation, it is because they believe that they can achieve a better outcome through this process. This process means a lot to them, or they would simply look for a more efficient solution. Effective negotiators can manage their own emotions and understand and manage the emotions of the other parties. They understand how to channel emotions in a motivational way so that an effective solution can be found. They also know how to persuade the other parties of their positioning and their interests through the management of their emotions. Consider our consultant in a high-stakes business project – emotions will be running high, but the consultant's role is to keep everyone focused by managing emotions effectively and focusing all parties on the end goals.

Problem-Solving

Going back to our example, a consultant's role is to identify issues or opportunities and develop solutions. Negotiation is essentially just that – a problem-solving exercise. We know that an opportunity exists by virtue of the parties coming together to engage in a discussion, so we need to come up with solutions that benefit all parties in some way.

Decision-Making

Finally, master negotiators are effective decision-makers. Think back to the definition of a negotiation; the goal of the discussions is to eventually make a decision. Just like a consultant assesses different options and then proposes a solution, we need to be able to evaluate different scenarios and options and reach a final agreement.

As we dive deeper into the art of negotiation, we will develop these skills or tools by applying them to negotiation scenarios.

1.3 The Impact of Negotiation Skills

Learning Objective

3. Evaluate the impact of negotiation skills on personal and professional development and success.

While negotiation skills may sometimes be considered reserved for upper management and top executives, these skills are both relevant and useful for all business professionals in their personal and professional lives. Have you ever looked at someone and wondered why they always seem to get the best deals in life? A lot of that can be attributed to effective negotiation skills. If we want to develop our negotiation skills and attain greater negotiation success, then we need to be willing to reflect on the process of negotiation.

Exercise

In our last negotiation, what type of outcome did we receive? Was it better than our previous negotiation? Did we become better listeners and better problem solvers? How did this process and experience transfer to our professional and everyday lives to help us grow? It is through this reflection and insight that we will gain a better understanding of the process of negotiation and how to become more successful negotiators ourselves.

1.4 Chapter Summary and Review

Summary

This chapter emphasizes the importance of negotiation in both professional and personal contexts. It defines negotiation as a process to find mutually beneficial solutions and highlights its ubiquity in everyday life. Essential characteristics of negotiation include the involvement of at least two interdependent parties with conflicting interests who must engage in a process of give and take. The chapter likens negotiation to a dance where each party's moves prompt adjustments from the other, stressing that successful negotiation relies on collaboration rather than a win-lose mentality.

The chapter also identifies key skills for mastering negotiation, including active listening, effective communication, emotional intelligence, problem-solving, and decision-making. Active listening involves understanding the other party's position, while effective communication encompasses both verbal and non-verbal elements. Emotional intelligence helps manage and leverage emotions during negotiations. Problem-solving focuses on identifying issues and developing mutually beneficial solutions, and decision-making is crucial for reaching final agreements. These skills contribute to both personal and professional growth, as they enhance one's ability to achieve favourable outcomes and improve overall negotiation success through reflection and continuous improvement.

OpenAI. (2024, June 12). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create a summary of the chapter content in the attached file in no more than two paragraphs.

Key Terms

- **Active listening** is much more than simply hearing, it involves developing an understanding of the other party's position and interests.
- **Communication** is at the core of the negotiation process. But it is not just about what we say, but also how we say it. Both verbal and non-verbal communication are key players in effective negotiations.

Review Questions

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Prompt: Create five multiple-choice questions based on the content in the attached file to check readers' knowledge of the content.

CHAPTER 2: NAVIGATING THE NEGOTIATION PROCESS

Chapter Overview

2.1 Stages of the Negotiation Process
2.2 Key Elements of Each Stage
2.3 Key Negotiation Concepts
2.4 Chapter Summary and Review

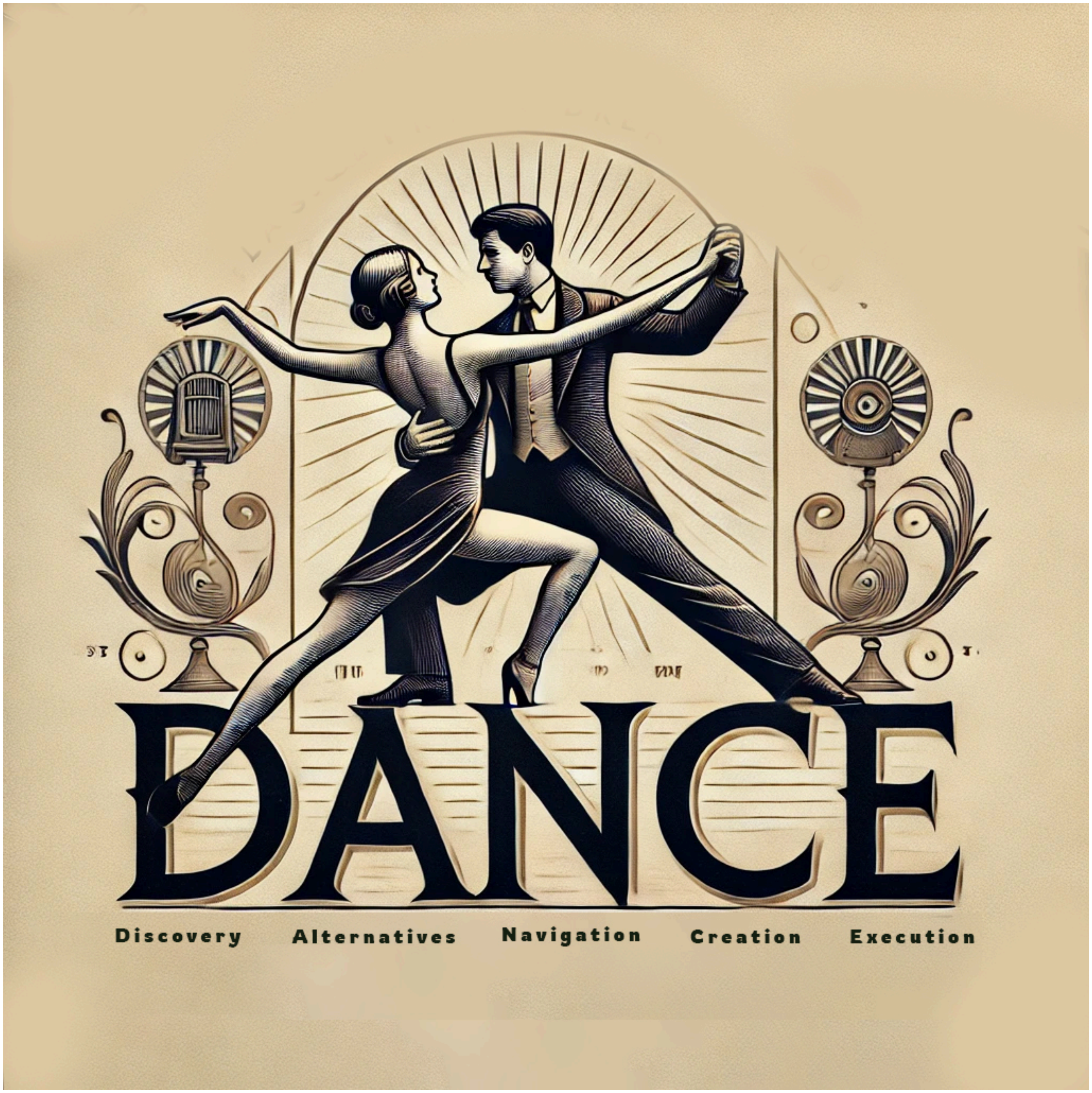
2.1 Stages of the Negotiation Process

Learning Objective

1. Identify the stages of the negotiation process

We began our discussion of negotiation by defining it as a process in which the parties involved are looking to reach a solution that is mutually beneficial. We compared the negotiation process to a dance, where when one party moves, the other party adjusts their response and finds their rhythm. Let's continue with this dance analogy as we describe the five stages of the negotiation process. Put very simply, negotiation can be summarized in five steps:

1. **D** – Discovery
2. **A** – Alternatives
3. **N** – Navigation
4. **C** – Creation
5. **E** – Execution


DANCE
Discovery
Alternatives
Navigation
Creation
Execution

Let's take a closer look at each of these stages.

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Prompt: Create a classic and creative image of two people dancing with the word DANCE prominently displayed. Between the two people, place the words discovery, alternatives, navigation, creation, and execution.

2.2 Key Elements of Each Stage

Learning Objective

2. Describe the key elements in each stage.

Stage 1: Discovery

The first stage is the **discovery stage,** or the information-gathering stage. Think of this as your warm-up. Often, this is a phase in the process that is overlooked or virtually ignored, yet it is of vital importance. This stage begins with a self-discovery. We need to step back and think about ourselves: What do we want and/or need from this negotiation? What are our goals? What is important to us, and what will we give up? We need to remember that at this stage, we likely have the clearest view of our goals since the negotiation process has not formally begun yet.

Once it does begin, we might get so caught up in the moment that we need to have a clear understanding of our goals that we can focus our attention on. Like our dance analogy, once the music starts, it is easy to get lost in it and lose focus on the end goal. Anytime we are in a negotiation situation, we need to know what we want, what we need, and what we can give up. We also want to take this time to consider the answers to these questions for the other party so we can have an idea of where this process might take us.

We wouldn't start a workout or a dance without a warm-up, so we can't forget to warm up for our negotiation!

Stage 2: Alternatives

In the second stage, we explore our **BATNA** or our "best alternative to a negotiated agreement" (Fisher & Ury, 1981). Why do we need to think about alternatives when we are in a negotiation? The simple answer is to figure out whether this is even worth it. Do we want to go through the negotiation process if we have other options that will make us just as satisfied if not more? Think about dancing, before you decide that you want to learn a particular style of dance you may want to explore all of your options. Are there other styles that may be easier to learn? Are there other dance skills that may be more "useful" or "transferrable"? Are there other dance partners that you would prefer?

When we have more options, we are likely to evaluate the negotiation proposals with a more critical eye and get the best deal possible for ourselves. Having a BATNA makes us really think about how the proposal fairs in relation to our alternatives. Is it better? Is it worse? This comparison will allow us to critically evaluate whether we should take a deal or walk away from it entirely.

Fisher and Ury said, “*The reason you negotiate is to produce something better than the results you can obtain without negotiating. What are those results? What is that alternative? What is your BATNA—your Best Alternative To a Negotiated Agreement? That is the standard against which any proposed agreement should be measured*” (Fisher & Ury, 1981).

The party with the best BATNA has the best negotiating position, so try to improve your BATNA whenever possible by exploring possible alternatives (Pinkley, 1995).

Stage 3: Navigation

In the third stage, we begin navigating the negotiation by presenting our proposals and listening to the counter-proposals. This is a great time to clarify and justify our positioning and ask questions that will help you to better understand the other party’s positioning.

This doesn’t need to be—and should not be—confrontational, though in some negotiations, that’s hard to avoid. But if tempers are high moving into this portion of the negotiation process, then those emotions will start to come to a head here. It’s important for you to manage those emotions so serious bargaining can begin.

Stage 4: Creation

The **creation stage** is where the real dancing begins. This is the give-and-take element of our negotiation. When we presented our proposals, we likely discovered areas of disagreement or potential conflicts, and now we need to come up with solutions that both parties will agree to. This is the choreography stage of our dance analogy. Both parties have an idea of what they want the final outcome to look like, but we need to now work together to create something that will be satisfying to both parties.

A natural part of this process is making concessions, namely, giving up one thing to get something else in return. Making a concession is not a sign of weakness—parties expect to give up some of their goals. Instead, **concessions** demonstrate cooperativeness and help move the negotiation toward its conclusion. Making a concession shows forward movement and process, and it allays concerns about rigidity or closed-mindedness.

This is where our discovery stage becomes even more important. We know that we will have to make concessions at some point, so we need to have a clear understanding of what is important to us. What are we willing to give up so that we can gain something else? This is where asking questions and active listening become so vital to effective negotiations. We need to truly understand why the other party wants something or is unwilling to give something up. We need to understand where their constraints stem from rather than just accepting their constraints at face value. The more that we understand the “why” behind their positioning, the better equipped we are to create solutions that will be mutually beneficial.

Stage 5: Execution

The final stage is the **execution phase**, or when the agreement is implemented. This is the grand finale, where everything comes together, and the negotiation comes to a successful close (most of the time!). You may encounter negotiations where the execution phase is simply the end of the discussion, and one or more of the parties choose to walk away.

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2.3 Key Negotiation Concepts

Learning Objective

3. Define key negotiation concepts

When we think of negotiations, we can categorize them into two main types: distributive and integrative negotiations.

Distributive Negotiations

Distributive negotiations are often referred to as “win-lose” negotiations. These are situations where there is a winner and a loser, and as one party gains, the other party will lose. This is a competitive type of negotiation, as each party is looking to gain more of the “fixed-pie” and it often leads to more conflict and a power struggle between the parties. Focusing on a fixed pie is a common mistake in negotiation because this view limits the creative solutions possible.

Integrative Negotiations

Integrative negotiations, on the other hand, are more of a “win-win” scenario. Rather than focusing on a “fixed-pie”, the parties focus on expanding the pie and coming up with mutually beneficial solutions. The first step of the integrative approach is to enter the negotiation from a cooperative rather than an adversarial stance. The second step is all about listening. Listening develops trust as each party learns what the other wants and everyone involved arrives at a mutual understanding. Then, all parties can explore ways to achieve their individual goals. The general idea is, “If we put our heads together, we can find a solution that addresses everybody’s needs.” Unfortunately, integrative outcomes are not the norm. A summary of 32 experiments on negotiations found that although they could have resulted in integrated outcomes, only 20% did so (Thompson & Hrebec, 1996). One key factor related to finding integrated solutions is the experience of the negotiators who were able to reach them (Thompson, 1990).

Returning to our dance analogy, we can think of distributive and integrative negotiation as whether we are trying to lead the dance or are moving together to create something even more beautiful.

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2.4 Chapter Summary and Review

Summary

This chapter outlines the negotiation stages using a dance analogy. The five stages—Discovery, Alternatives, Navigation, Creation, and Execution—are likened to the steps of a dance. In the Discovery stage, negotiators gather information and clarify their goals, considering what they and the other party want and need. The Alternatives stage involves exploring the best alternatives to a negotiated agreement (BATNA) to ensure the negotiation is worth pursuing. Navigation is the phase where proposals and counter-proposals are exchanged, while the Creation phase focuses on crafting mutually beneficial solutions through concessions and cooperation. Finally, the Execution stage brings the negotiation to a close, implementing the agreed-upon solutions.

The chapter also distinguishes between distributive and integrative negotiations. Distributive negotiations, seen as "win-lose" scenarios, involve a competitive struggle over a fixed resource. In contrast, integrative negotiations, or "win-win" scenarios, aim to expand the pie through cooperation and creative problem-solving. Successful integrative negotiations depend on trust and understanding, emphasizing the importance of listening and collaboration. Despite their potential for mutually beneficial outcomes, integrative negotiations are less common, with only 20% of negotiations resulting in such outcomes, according to research. This chapter emphasizes the strategic approach to negotiation, highlighting the importance of preparation, alternatives, and adaptability throughout the process.

OpenAI. (2024, June 12). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create a summary of the chapter content in the attached file in no more than two paragraphs.

Key Terms

- **BATNA** or "best alternative to a negotiated agreement." Why do we need to think about alternatives when we are in a negotiation? The simple answer is to figure out whether this is even worth it.

- **Concessions** demonstrate cooperativeness and help move the negotiation toward its conclusion.
- **Creation stage**: This is the give-and-take element of our negotiation. When we presented our proposals, we likely discovered areas of disagreement or potential conflicts, and now we need to come up with solutions that both parties will agree to.
- **Discovery stage** or the information-gathering stage. This stage begins with a self-discovery. We need to step back and think about ourselves: What do we want and/or need from this negotiation? What are our goals? What is important to us, and what will we give up?
- **Distributive negotiations** are often referred to as "win-lose" negotiations. These are situations where there is a winner and a loser, and as one party gains, the other party will lose.
- **Execution phase**, or when the agreement is implemented. This is the grand finale, where everything comes together, and the negotiation comes to a successful close (most of the time!).
- **Integrative negotiations** are more of a "win-win" scenario. Rather than focusing on a "fixed-pie", the parties focus on expanding the pie and coming up with mutually beneficial solutions.
- **Navigation stage:** This is a great time to clarify and justify our positioning and ask questions that will help you to better understand the other party's positioning.

Review Questions

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Prompt: Create five multiple-choice questions based on the content in the attached file to check readers' knowledge of the content.

CHAPTER 3: PREPARING FOR SUCCESSFUL NEGOTIATIONS

Chapter Overview

[3.1 Preparation and Planning]
[3.2 Conducting Research]
[3.3 Chapter Summary and Review]

3.1 Preparation and Planning

Learning Objective

1. Discuss the importance of thorough preparation and planning for successful negotiations

“*Empty Stage*” *by* *renewleeds*. *CC BY NC SA*

We wouldn’t step onto the stage without preparation, so how can we enter a negotiation without proper preparation and planning? Negotiation preparation and planning are the foundations for successful negotiation. These steps allow us to understand all aspects of the negotiation. Before we engage in negotiations, we need to complete our research, identify the various options (including the win-win options and alternatives) and understand the wants and needs of both parties. We also need to identify our objectives and goals for the negotiation to strategize how to achieve what we want from the negotiation process.

The more we prepare and plan, the greater the likelihood of a positive outcome from the negotiation. While this may not guarantee a specific outcome for us, it will at least give us a roadmap for our negotiation and help us to navigate the entire process better. Think of it like this: without preparation, you are a dancer trying to dance without knowing or having practiced the steps, likely leading to many missteps.

The **negotiation process** consists of identifying one’s desired goals – that is, what you are trying to get out of the exchange – and then developing suitable strategies aimed at reaching those goals. A key feature of one’s strategy is knowing one’s relative position in the bargaining process. That is, depending upon your relative position or strength, you may want to negotiate seriously, or you may want to tell your opponent to “take it or leave it.” The dynamics of bargaining power can be extrapolated directly from the discussion of power and indicate several conditions affecting this choice. For example, you may wish to negotiate when you value the exchange, when you value the relationship, and when commitment to the issue is high. In the opposite situation, you may be indifferent to serious bargaining.

Example

When to Negotiate		
Bargaining Strategies		
Characteristics of the Situation	**Negotiate**	**“Take It or Leave It”**
Value of Exchange	High	Low
Commitment to a decision	High	Low
Trust Level	High	Low
Time	Ample	Pressing
Power Distribution*	Low or balanced	High

When to Negotiate		
Bargaining Strategies		
Characteristics of the situation	**Negotiate**	**“Take It or Leave It”**
Relationship between the two parties	Important	Unimportant

*Indicates relative power distribution between the two parties; “low” indicates that one has little power in the situation, whereas “high” indicates that one has considerable power

Once goals and objectives have been established and the bargaining strategy is set, time is required to develop a suitable plan of action. Planning for negotiation requires a clear assessment of your strengths and weaknesses and those of your opponents. Roy Lewicki and Joseph Litterer have suggested a format for preparation for negotiation.

According to this format, planning for negotiation should proceed through the following phases:

1. Understand the basic nature of the conflict. What are the primary areas of agreement and disagreement?
2. What exactly do you want out of this negotiation? What are your goals?
3. How will you manage the negotiation process? Here, several issues should be recognized:
    - Identify the primary issues to negotiate.
    - Prioritize these issues.
    - Develop a desirable package that includes these important issues.

    - Establish an agenda.

4. Do you understand your opponent?
    - What are your opponent’s current resources and needs?
    - What is the history of your opponent’s bargaining behaviour? What patterns can you see that can help you predict her moves?

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3.2 Conducting Research

Learning Objective

2. Conduct research to gather relevant information and resources to prepare for negotiation

Part of the negotiation process includes gathering the relevant information and resources to prepare for the negotiation. This will often involve developing a relationship of trust with the other party so that we can understand their wants and needs and better prepare for the negotiation itself. It is like learning the steps of the dance. We need to conduct thorough research to be ready to negotiate. While there are several methods for gathering information and resources, each will have its own strengths and weaknesses and may be more or less applicable depending on the negotiation scenario. Some of the more common methods include:

- Secondary research
- Benchmarking
- Appreciative Inquiry

Secondary Research

Secondary research can help answer the question, “What is already known about this problem?” This is often the first place to start understanding the problem better.

Begin each collective decision-making session by expecting civility, practicing dialogue, encouraging candour, and inviting deliberation.

Because so much information is readily available these days, it makes sense to begin solving problems by searching for available information. Useful information sources include general web searches such as Google Search; specialized web searches such as Google Scholar; online encyclopedias such as Wikipedia and Scholarpedia; libraries, books, periodicals, Academic journals, News media, archives, standards, written law, bibliographic databases, and others.

Benchmarking

Benchmarking can help us answer the question, “How do they do that?

The simplest approach to benchmarking is to identify some existing solution to your problem or some related problem and learn all you can from that solution. We benchmark every day when we ask friends to name their favourite restaurants, smartphone applications, books to read, or colleges to attend. More formal benchmarking efforts may follow a comprehensive procedure.

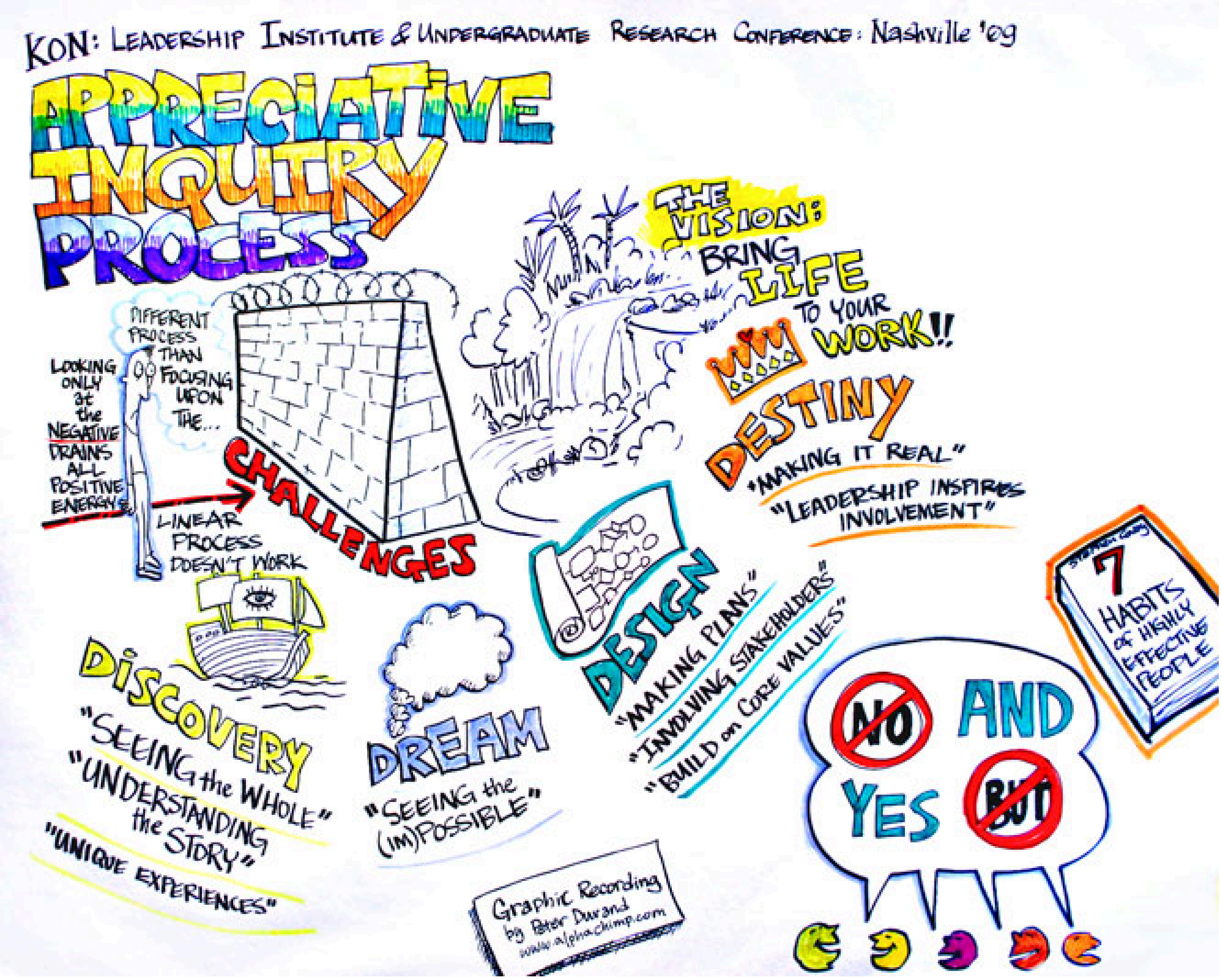
Creative people claim, “Good artists copy; great artists steal”. We certainly don’t advocate theft, plagiarism, or isolation. We also don’t advocate reinventing the wheel or ignorance. Begin with the best practice in mind.

Appreciative Inquiry

Appreciative inquiry uses ways of asking questions and envisioning the future to foster positive relationships and build on the present potential of a given person, organization or situation. The most common model utilizes a cycle of four processes, which focus on what it calls:

- **Discover:** The identification of organizational processes that work well.
- **Dream**: The envisioning of processes that would work well in the future.
- **Design**: Planning and prioritizing processes that would work well.
- **Destiny** (or **Deploy**): The implementation (execution) of the proposed design.

The aim is to build – or rebuild – organizations around what works rather than trying to fix what doesn't. Appreciative Inquiry practitioners describe this approach as a complement to solving problems.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THE VISION: BRING LIFE TO YOUR WORK!!
DIFFERENT PROCESS THAN FOCUSING UPON THE...
LOOKING ONLY at the NEGATIVE DRAINS ALL POSITIVE ENERGY
CHALLENGES
LINEAR PROCESS DOESN'T WORK
DESTINY
"MAKING IT REAL"
"LEADERSHIP INSPIRES INVOLVEMENT"
DESIGN
"MAKING PLANS"
"INVOLVING STAKEHOLDERS"
"BUILD on CORE VALUES"
7 HABITS of HIGHLY EFFECTIVE PEOPLE
NO
AND
YES
BUT
DISCOVERY
"SEEING the WHOLE"
"UNDERSTANDING the STORY"
"UNIQUE EXPERIENCES"
DREAM
"SEEING the (IM)POSSIBLE"
Graphic Recording by Peter Durand www.alphachimp.com

"Appreciative Inquiry" by Peter Durand. CC BY-NC-ND 2.0 Click to enlarge.

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3.3 Chapter Summary and Review

Summary

This chapter emphasizes the importance of thorough preparation and planning for successful outcomes. The chapter outlines that entering a negotiation without adequate preparation is akin to performing on stage without rehearsal. Effective preparation involves conducting research, understanding all aspects of the negotiation, identifying various options (including win-win solutions), and comprehending both parties' wants and needs. By setting clear objectives and goals, negotiators can develop strategies that increase the likelihood of positive results, even if these do not guarantee specific outcomes. The text also highlights the importance of recognizing one's relative bargaining position and adapting strategies accordingly, whether to negotiate seriously or take a more assertive stance based on the value of the exchange, commitment, trust level, time constraints, power distribution, and the importance of the relationship between the parties.

The chapter also delves into specific methods for gathering relevant information and resources, a critical component of preparation. It suggests conducting secondary research, benchmarking, and using appreciative inquiry. Secondary research involves utilizing existing information sources to understand the problem better, while benchmarking learns from existing solutions to similar problems. Appreciative inquiry focuses on identifying successful organizational processes, envisioning future improvements, planning and prioritizing these processes, and implementing the proposed designs. These methods help negotiators build trust, understand the other party's needs, and prepare comprehensively for negotiations, likened to learning and practicing dance steps to ensure a smooth performance.

OpenAI. (2024, June 12). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create a summary of the chapter content in the attached file in no more than two paragraphs.

Key Terms

- **Appreciative inquiry** uses ways of asking questions and envisioning the future to foster positive relationships and build on the present potential of a given person, organization or situation.

- **Benchmarking** can help us answer the question, “How do they do that?
- **Design**: Planning and prioritizing processes that would work well.
- **Destiny** (or **Deploy**): The implementation (execution) of the proposed design.
- **Discover:** The identification of organizational processes that work well.
- **Dream**: The envisioning of processes that would work well in the future.
- **Negotiation process** consists of identifying one’s desired goals – that is, what you are trying to get out of the exchange – and then developing suitable strategies aimed at reaching those goals.
- **Secondary research** can help answer the question, “What is already known about this problem?” This is often the first place to start understanding the problem better.

Review Questions

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/effectivenegotiations/?p=175#h5p-3

OpenAI. (2024, June 3). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create five multiple-choice questions based on the content in the attached file to check readers’ knowledge of the content.

CHAPTER 4: STRATEGIC NEGOTIATION PLANNING

Chapter Overview

4.1 Developing a Negotiation Plan
4.2 The Role of BATNA
4.3 Overcoming Challenges
4.4 Chapter Summary and Review

4.1 Developing a Negotiation Plan

Learning Objective

1. Develop a Negotiation Plan

We have conducted our research and gathered the relevant information and resources; now, we need to critically evaluate all of it. Not all of it will be relevant; some may be more important than others, so we need to verify its value and validity for our specific negotiation. Again, think of choreographing a dance. There are so many different steps and moves that a dancer could put together, but not all the steps could enhance the dance.

Similarly, consider all the various pieces of music one could use to choreograph a dance. Some music might be better suited to the end goal or vision for the dance, whereas other pieces may not fit with the dance at all. Just like a dancer would sift through steps and music to choreograph their dance, we need to evaluate all the gathered information and decide which is of most value to us for our negotiation.

Now, we have the steps and the music, but we still need to put it all together into a sequence. Same idea for our negotiation plan. We need a well-thought-out plan that clearly details the sequence of issues, the strategies we will use for each of those issues, and the outcomes that we hope to achieve. How we sequence our issues will be up to us, but it may be beneficial, to begin with issues where there is more agreement or common ground to show to the other party that we are willing to discuss and negotiate while leaving the more contentious issues for later in the negotiation. We may also want to start off with issues that we care less about first and be more lenient or giving on those issues and leave the important ones for the grand finale.

Now that we have our plan, we will need to execute it. But we need to remain flexible. Remember, negotiations are a dance of give and take. We need to be prepared to adjust our responses and strategies to the other party. We need to listen to the other party, make offers and respond to their counteroffers. No matter how well laid out our plan is, things will change. We may need to improvise and adjust our plan as the negotiation plans. However, the more prepared we are, the more information we have, the better equipped we are to negotiate effectively and achieve our goals.

4.2 The Role of BATNA

Learning Objective

2. Understand the role of BATNA in strategy formulation

The Best Alternative to a Negotiated Agreement (BATNA) is a strategy to consider when planning your negotiation process. You may find alternative ways to settle a negotiation by conducting research before a negotiation.

Example

For example, when reviewing your car insurance policy, you may see that your rates have increased again for the second year in a row, even though you have had no accidents or claims. Then you find that another auto insurance carrier offers the same coverage for much less. Instead of moving your insurance from one company to another, you may use this information to negotiate a better deal with your current insurance company.

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4.3 Overcoming Challenges

Learning Objective

3. Discuss potential challenges and develop strategies to overcome them

When we think of the nature of negotiations, there is inherent conflict between the parties. One party's wants and needs are likely to some degree conflict with those of the other party, so it is only natural that we will encounter some challenges along the way. While there may be various unique challenges that we might experience during a negotiation, they tend to generally fall under two categories: miscommunication and inability to reach an agreement. Again, think of our dance analogy. The slightest miscommunication could lead to a big mistake in the dance, which could have consequences for the entire performance. Similarly, if two partners cannot agree on a dance step or a particular choice of music, the performance will not happen.

An important strategy to consider when planning for our negotiation is how we can create value for both parties so that we can find a mutually beneficial solution.

It is important to create value in a negotiation, and this may mean finding a creative win-win situation for all parties to agree to. Or if a win-win cannot be accomplished, then perhaps, at a minimum, create a solution that might allow both parties to move forward, even if slightly after the negotiation process. **Creating value** means that you can show the opposition why a certain path is good for both parties.

Integrative bargaining is another strategy that helps you create value to reach a win-win resolution. **Integrative bargaining** looks for the best solution for both sides, and by showing the opposition the value, they may be more likely to agree to a resolution. For example, in a real estate negotiation, one side might offer a slightly higher price in exchange for additional features they know the other side wants. By showing that added value and understanding wants and needs, you can work together to accomplish a solution that works well for all sides.

During your planning, think about why the other person would want to accept the deal. People aren't likely to accept a deal that doesn't offer any benefit to them. Help them meet their own goals while you achieve yours. Integrative outcomes depend on having good listening skills, and if you are thinking only about your own needs, you may miss out on important opportunities. Remember that a good business relationship can only be created and maintained if both parties get a fair deal.

Any strategy we use will have some risk associated with it, just like every dance move carries a risk – we might damage the relationship with the other party or lose the deal entirely. However, the more that we can plan and strategize for our negotiation, the more likely we are to overcome these challenges through the negotiation process.

Tips for Negotiation Success

- *Focus on agreement first*. If you reach an impasse during negotiations, sometimes the best recourse is to agree that you disagree on those topics and then focus only on the ones that you can reach an agreement on. Summarize what you've agreed on so that everyone feels like they're agreeing, and leave out the points you don't agree on. Then, take up those issues again in a different context, such as over dinner or coffee. Dealing with those issues separately may help the negotiation process.
- *Be patient*. If you don't have a deadline by which an agreement needs to be reached, use that flexibility to your advantage. The other party may be forced by circumstances to agree to your terms, so if you can be patient, you may be able to get the best deal.
- *Whose reality?* During negotiations, each side is presenting their case—their version of reality. Whose version of reality will prevail? Leigh Steinberg offers this example from the NFL when he was negotiating the salary of Warren Moon. Moon was 41 years old. That was a fact. Did that mean he was hanging on by a thread and lucky to be employed in the first place? "Should he be grateful for any money that the team pays him?" Steinberg posed, "Or is he a quarterback who was among the league leaders in completions and attempts last year? Is he a team leader who took a previously moribund group of players, united them, and helped them have the best record that they've had in recent years?" All those facts are true, and negotiation brings the relevant facts to the forefront and argues their merit.
- *Deadlines.* Research shows that negotiators are more likely to strike a deal by making more concessions and thinking more creatively as deadlines loom than at any other time in the negotiation process.
- *Be comfortable with silence*. After you have made an offer, allow the other party to respond. Many people become uncomfortable with silence and feel they need to say something. Wait and listen instead.

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"Tips for Negotiation Success" Adapted from information in Stuhlmancher, A. F., Gillespie, T. L., & Champagne, M. V (1998). "The impact of time pressure in negotiation: A meta-analysis". *International Journal of Conflict Management*, 9,97-116; Webber, A. (1998, October). "How to get them to show you the money". Fast Company. Retrieved November 13, 2008 from https://www.fastcompany.com/35462/how-get-them-show-you-money. Used for education purposes under fair dealing.

4.4 Chapter Summary and Review

Summary

This chapter focuses on developing a comprehensive plan for successful negotiations. It emphasizes the critical evaluation of gathered information to identify the most relevant and valuable data, much like choreographing a dance where not all steps or music enhance the performance. The chapter outlines the need for a well-thought-out sequence of issues, strategies for each issue, and the desired outcomes. Starting with areas of agreement or less important issues can build momentum and show a willingness to negotiate. Flexibility is essential, as negotiations are dynamic and require adjustments in response to the other party's actions and counteroffers.

The chapter also discusses the importance of understanding and utilizing the Best Alternative to a Negotiated Agreement (BATNA) as a strategy to strengthen one's negotiating position. It highlights potential challenges in negotiations, such as miscommunication and inability to reach an agreement, and suggests creating value for both parties through integrative bargaining. This approach seeks win-win solutions by understanding and addressing the needs and goals of the other party. The chapter concludes with practical tips for negotiation success, including focusing on agreement first, being patient, understanding each side's version of reality, utilizing deadlines, and being comfortable with silence.

OpenAI. (2024, June 12). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create a summary of the chapter content in the attached file in no more than two paragraphs.

Key Terms

- **Creating value** means that you can show the opposition why a certain path is good for both parties.
- **Integrative bargaining** looks for the best solution for both sides, and by showing the opposition the value, they may be more likely to agree to a resolution.

Review Questions

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/effectivenegotiations/?p=177#h5p-4

OpenAI. (2024, June 3). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create five multiple-choice questions based on the content in the attached file to check readers' knowledge of the content.

CHAPTER 5: UNCOVERING NEGOTIATION STRATEGIES

Chapter Overview

5.1 Principled Negotiation
5.2 Getting More
5.3 Tactical Empathy
5.4 Chapter Summary and Review

5.1 Principled Negotiation

Learning Objective

1. Compare various negotiation strategies

There are many different styles or strategies for approaching negotiations. In this chapter, we will discuss the three most popular.

The concept of principled negotiation was introduced in the book *Getting to Yes* by Roger Fisher and William Ury. In **principled negotiation**, one moves successfully through the process by determining which needs are fixed and which needs are flexible for the negotiators. It was meant to be a negotiation strategy by which agreements could be made without damaging business relations (Fisher & Ury, 1981).

The Principled Negotiation Process

There are five major points that one should consider in the negotiation process:

1. *Separate the people from the problem.* This describes the way the parties should interact with each other throughout the negotiation process. Negotiators are only people, and they have personal interests in their positions. If Party A attacks the position of Party B, it can feel as though he or she is attacking Party B personally. If parties can go into a negotiation committed to clear communication and do their best to acknowledge the emotions that are attached to the negotiation process, there will be a better chance for an amicable resolution.
2. *Focus on interests, not positions.* This is an aspect to be considered throughout the negotiation process, starting with planning and preparation and revisiting in clarification and justification. A party's position is something he has decided upon. His interests are the reason why he's made that particular decision. Each party should attempt to explain their interests clearly and have a full understanding of the other party's interests.
3. *Invent options for mutual gain.* It's during this stage that falls within the bargaining discussion part of the process that parties should get together and try to generate as many possible options for resolution. Parties can focus on shared interests to generate as many win-win solutions as they can during the brainstorming sessions. Once all possible solutions are exhausted, evaluation of those proposed solutions can begin.
4. *Insist on using objective criteria.* Using objective criteria can keep the discussion polite and the

relationship preserved during the negotiation process. This objective criteria can be introduced during the ground rules stage or at any point thereafter, and parties should agree to its use. Objective criteria can be statistics, past legal judgments, professional standards or other data that is legitimate and practical.

5. *Understand your BATNA*. The BATNA – the best alternative to a negotiated agreement – is the most advantageous course of action a party can take if negotiations fail and an agreement can't be made. A party should never accept a negotiated deal that leaves him or her worse off than his BATNA. The BATNA is a leverage point in negotiations, and without a clear idea of BATNA, a party is negotiating blindly.

With these suggestions, Fisher and Ury greatly impacted the art of negotiation. People no longer looked for a "piece of the pie." They wanted to "expand the pie" and keep relationships intact by applying these integrated bargaining techniques to their next negotiation opportunities.

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5.2 Getting More

In *Getting More (2010)*, Stuart Diamond's approach focuses on finding and valuing the perceptions and emotions of others rather than using the traditional tactics of power, logic, and leverage. "Think of yourself as the least important person in the negotiation," a written quote on his website suggests. "Even with hard bargainers, it has to begin with their feelings and perceptions, their sensibilities" (The Getting More Model, n.d.).

Getting More emphasizes valuing the trust aspect of negotiations, encouraging participants to be transparent and constructive, not manipulative. He even encourages parties to "make emotional payments," that is, tapping into the other party's emotional psyche with empathy or simply by valuing them. Getting More takes the idea of preserving a relationship during the bargaining process and escalates it to the next step by actually leveraging the personal connection.

Examples

This negotiations model has been adopted by U.S. Special Operations Command for the training of U.S. Special Forces, Green Berets, U.S. Navy Seals, the U.S. Marines and other units, and Google has used the book to train 12,000 of their employees worldwide.

Photo by the U.S. Military, CC BY-NC-ND 2.0

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5.3 Tactical Empathy

Former FBI hostage negotiator Chris Voss took a different stance on the negotiation process in his recent book *Never Split the Difference,* where he promotes the idea of **tactical empathy**. In Voss's negotiation strategy, by empathizing with the other party, the negotiator can win trust and bring that other party over to his side, where he then involves her in solving "her problem" (Voss & Raz, 2017). This follows Stuart Diamond's book, valuing people by acknowledging their intelligence, after which the negotiator advances his point of view by asking the other party's opinion. The process relies simply on the idea that both parties understand each other's point of view when it comes to this subject.

Voss (2017) also provides some psychological techniques that help connect you, as the negotiator, to the other party. He suggests "mirroring" what the other party says by repeating their last three words before adding your thoughts. Mirroring helps the other party feel more secure and heard. The negotiator can also help foster security with the other party by allowing them to offer up a few "no" responses to requests. "Pushing too quickly for a yes can lead to mistrust," he says. By asking questions that "bait the 'no,'" Voss helps the other party feel in control. "Is this a bad time to talk?" he might ask. "No," the other party might reply, "this is a good time."

This differs from Diamond's approach to negotiation in that Diamond is advocating for a genuine personal connection to put the other party at ease, while Voss uses techniques and tactics that do the same without having to make a personal investment. However, both strategies follow Ury's and Fisher's recommendation of "separating the person from the problem" to a more thoughtful, purposeful level.

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5.4 Chapter Summary and Review

Summary

This chapter explores three prominent negotiation strategies: Principled Negotiation from *Getting to Yes* by William Ury and Roger Fisher, the empathetic approach from *Getting More* by Stuart Diamond, and Tactical Empathy from *Never Split the Difference* by Chris Voss. Ury and Fisher's principled negotiation emphasizes separating people from the problem, focusing on interests rather than positions, generating options for mutual gain, using objective criteria, and understanding one's Best Alternative to a Negotiated Agreement (BATNA). This approach aims to create mutually beneficial outcomes while preserving relationships.

In contrast, Diamond's approach highlights the importance of understanding and valuing the perceptions and emotions of the other party, suggesting that building trust and making "emotional payments" can be crucial for successful negotiations. Voss's method introduces Tactical Empathy, where mirroring and strategic use of "no" responses help build rapport and trust, allowing negotiators to better understand and influence the other party. Both Diamond and Voss expand on Ury and Fisher's principles by integrating deeper emotional and psychological techniques into the negotiation process.

OpenAI. (2024, June 12). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create a summary of the chapter content in the attached file in no more than two paragraphs.

Key Terms

- **Getting More** emphasizes valuing the trust aspect of negotiations, encouraging participants to be transparent and constructive, not manipulative.
- **Principled negotiation**, one moves successfully through the process by determining which needs are fixed and which needs are flexible for the negotiators.
- **Tactical empathy** in Voss's negotiation strategy: by empathizing with the other party, the negotiator is able to win trust and bring that other party over to his side, where he then involves

her in the solving of "her problem."

Review Questions

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/effectivenegotiations/?p=233#h5p-5

OpenAI. (2024, June 3). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create five multiple-choice questions based on the content in the attached file to check readers' knowledge of the content.

CHAPTER 6: EFFECTIVE COMMUNICATION TECHNIQUES

Chapter Overview

6.1 Effective Communication
6.2 Verbal and Non-Verbal Communication
6.3 Active Listening and Framing
6.4 Overcoming Barriers to Negotiations
6.5 Chapter Summary and Review

6.1 Effective Communication

Learning Objective

1. Understand the importance of effective communication skills

Any negotiation that you are a part of will require at least some form of communication, and so, it should come as no surprise that our success in negotiations will depend on having advanced communication skills. Not only will we need to listen carefully to understand the needs of the other party, but we will also have to figure out the best way to respond to reach an agreement that is mutually beneficial.

A skilled negotiator will know when to speak, when to listen, and even when to stop speaking or communicating. We can think of communication as the music that sets the tone for the dance and guides the dance. Just as the music influences the moves and the pace of the dance, effective communication will influence the direction and outcome of our negotiation. Effective communication skills are important for successful negotiations because they are critical in building relationships and trust across the parties.

When there is a trusting relationship between the parties, it is more likely that both parties will engage in honest and open communication, which can lead to more beneficial outcomes for all involved. Further, effective communication reduces misunderstandings and conflicts. Think about how many times we were involved in a conflict due to something as simple as a misunderstanding in our communication. Perceptions play an important role in how our messages are received, so the more effective and clear our communication, the more likely we are to have a productive and efficient negotiation. Finally, it is important to note that communication is one of those competencies that can always be improved through feedback, practice and ongoing reflection.

Image: OpenAI. (2024, July 9). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: *Create an image of two people dancing together, where the dress is teal, and the background is removed. Save as PNG file.*

6.2 Verbal and Non-Verbal Communication

Learning Objective

2. Identify effective verbal and non-verbal techniques in negotiation settings

If we think of communication as the music for the dance, we can consider verbal communication as the lyrics and non-verbal as the dance movements. Both are important components as they can add depth and meaning to the music itself.

Verbal Communication

Song Lyrics
Song Lyrics

In terms of verbal communication, the message and the delivery of the message are important to successful negotiations. Like the lyrics in a song, your words in a negotiation will convey your intentions. Think of a song that is very memorable or impactful to you. Often, we are drawn to songs that we can either repeat due to the clarity of the lyrics or that stimulate a particular emotion within us – the tone of the song. We need to focus on both the clarity or precision of our words and the tone or emotion within our words to have successful negotiations.

When we think of the actual words we will use in our negations, we want to be both clear and concise. When negotiating, clarity is very important because it avoids ambiguity, which can lead to misunderstanding among the parties. The simpler and more precise our language, the easier it will be understood by the other party. Remember, we want to communicate our wants and needs to the other party to facilitate a mutually beneficial outcome. Avoid using jargon or words that might be confusing to the other party. While some may think that confusing the other party can lead to a better outcome for themselves, it can be detrimental to the negotiation and can end the relationship. It is harder to remember a song in which you can barely figure out what the words are, and we want our words to be memorable in our negotiation. We also need to remember to be specific in what we say. Providing more details and examples helps the other party to really understand what we need from the negotiation. Specificity adds clarity to the negotiation by allowing both parties to truly be on the same page throughout the negotiation. When we prepare for our negotiation and plan our strategy, we should always ask ourselves whether we can provide more details to support our statements.

Not only is what we say important, but how we say it also matters to a successful negotiation. Think about how the tone of a song can evoke different feelings or emotions within us; the tone of our statements can also convey a variety of meanings (assertiveness, confidence, openness, etc.). There are a few different tones that are important to think about in negotiations. These include calm, empathetic and positive. Each of these is important to successful negotiations but also has a different meaning. When we are calm in our messaging, we demonstrate control, confidence and competence to the other party. Empathy is important to building that trust and relationship that we need to keep the momentum going and achieve a mutually beneficial outcome. Finally, a positive tone also helps with relationship building and encouraging collaboration among the parties.

Finally, we need to focus on harmony. We need our messaging and our tone to align to create a coherent message. We not only want our message to be clearly understood, but we also want it to be received in the intended way, through the tone that we use. Try to focus on consistency and adaptability, meaning that we should ensure our message and tone are consistent with one another but also adjust our tone to adapt to the other party to encourage collaboration and trust within the negotiation.

Non-Verbal Communication

Earlier, we thought of non-verbal communication as the dance movements, so three things come to mind: body language, eye contact, and gestures. All three are very important in successful negotiations as they add even more meaning to what we are saying and how we are saying it. Throughout our negotiations, we need to be aware of our body language, ensuring that it remains open and positive to foster collaboration and trust. Maintaining eye contact also demonstrates that we are actively listening to the other party and demonstrates our commitment to trying to achieve a mutually beneficial solution for all. Finally, gestures can help to emphasize our key ideas and show that we are engaged in the negotiation and actively listening and participating.

Image: OpenAI. (2024, August 21). *ChatGPT*. [Large language model]. https://chat.openai.com/chat

Prompt: Generate an image showing a sheet with song lyrics, next to it a sheet with a musical staff of the lyrics, and a microphone. *Save as PNG file.*

6.3 Active Listening and Framing

Learning Objective

3. Utilize active listening skills and framing techniques to steer negotiation discussions

Active Listening

As discussed earlier, active listening is a critical skill for effective negotiations. We need to be attuned to the other party and their movements, just as a dancer is attuned to their partner. **Active listening** is engaging with the other party's words, intentions and emotions to understand their position and achieve a mutually beneficial outcome. Key active listening skills include paraphrasing, inquiring and acknowledging.

- **Paraphrasing** involves repeating back what the other party has said in our own words. It is important because it demonstrates to the other party that we are listening and shows our understanding of their wants and needs. This helps to build trust and rapport and encourages collaboration between the parties.
- **Inquiring** is another important element of active listening because asking open-ended questions helps us to gather more information and clarify the other party's position. We discussed the importance of information gathering in our chapter on planning. The more information that we have, the better positioned we are to achieve a successful outcome in a negotiation. However, to understand what the other party needs, we need to listen and ask questions to clarify points that may be murky.
- Finally, we need to practice **acknowledging**. What this means is respecting the other party's positioning and perspective by recognizing and acknowledging it. We do not need to agree with everything that they are saying, but a simple acknowledgement, such as saying "I understand how important this is to you", sends a strong signal that we are open to negotiation and to achieving a mutually beneficial outcome.

Framing

Framing is another important technique in negotiations. We can think of framing as providing direction or steering the negotiation towards a positive outcome. There are two keyframing techniques that we need to be aware of positive framing and reframing.

- **Positive framing** focuses on the positives of the proposals rather than the drawbacks.
- **Reframing** tries to change the way that a proposal is perceived to find common ground or a new opportunity. These are important techniques, especially when the negotiation has hit a roadblock, and we need to refocus the parties to keep them motivated to continue to negotiate. Simply changing how we look at a proposal or situation can inspire creativity and collaboration that can help us find a new solution to the issue we are experiencing.

6.4 Overcoming Barriers to Negotiations

Learning Objectives

4. Discuss strategies for overcoming negotiation barriers

Just like in a dance, a negotiation may encounter barriers or stumbles that can disrupt the harmony and flow of the negotiation. These barriers can stem from cultural differences, emotional responses, or even simply miscommunication. A dancer who stumbles in their performance needs to adapt and refocus to complete the dance. Similarly, as negotiators, we need to navigate the obstacles that we encounter and use strategies to move forward positively in the negotiation regardless of the setbacks that we may experience.

Cultural Differences

As mentioned before, cultural differences could create communication barriers. **Cultural differences** can lead to misunderstandings through varying perceptions or cultural nuances. Being aware of cultural differences and respecting cultural differences is important in building trust and rapport with the other party.

Emotional Responses

Emotional responses can also be a source of miscommunication within a negotiation. **Emotional responses** can elevate conflict and hinder our progress. This is why emotional intelligence is such a critical skill for successful negotiators. Not only do we need to understand and manage our own emotions, but we also need to be aware of the emotional responses of the other party, show empathy and use framing techniques to manage the emotions.

Miscommunication

We cannot overemphasize the importance of clarity and preciseness in our messaging to avoid miscommunication barriers within our negotiation. Miscommunication can lead to misunderstanding and conflict. Therefore, being clear, concise, actively listening and engaging in non-verbal techniques in our communication is of vital importance to managing communication barriers. We also need to remember to be flexible and adaptable and adjust our responses to the situation and to the other party to build trust and encourage collaboration.

6.5 Chapter Summary and Review

Summary

This chapter emphasizes the critical role of effective communication in negotiations, outlining how both verbal and non-verbal skills impact the success of negotiations. Effective communication is likened to the music in a dance, where clarity, tone, and alignment of verbal messages with non-verbal cues such as body language, eye contact, and gestures guide the negotiation process. Clear and concise verbal communication, combined with an appropriate tone—whether calm, empathetic, or positive—helps to build trust and prevent misunderstandings. Non-verbal cues further reinforce messages and contribute to a collaborative atmosphere, making it essential for negotiators to maintain positive body language and consistent eye contact.

The chapter also discusses active listening and framing techniques as key tools for steering negotiations. Active listening involves paraphrasing, inquiring, and acknowledging to fully understand the other party's position and build rapport. Framing techniques, such as positive framing and reframing, help to maintain momentum and find creative solutions when negotiations face obstacles. Finally, the text addresses strategies for overcoming barriers, including cultural differences and emotional responses, emphasizing the need for emotional intelligence, flexibility, and adaptability to ensure effective communication and successful outcomes in negotiations.

OpenAI. (2024, June 12). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create a summary of the chapter content in the attached file in no more than two paragraphs.

Key Terms

- **Acknowledging**: This means respecting the other party's position and perspective by recognizing and acknowledging it. We do not need to agree with everything that they are saying, but a simple acknowledgement.
- **Active listening** is about engaging with the other party's words, intentions and emotions to really understand their position and achieve a mutually beneficial outcome. Key active listening skills

include paraphrasing, inquiring and acknowledging.
- **Cultural differences** can lead to misunderstandings through varying perceptions or cultural nuances.
- **Emotional responses** can elevate conflict and hinder our progress.
- **Framing** is providing direction or steering the negotiation towards a positive outcome.
- **Inquiring** is another important element of active listening because asking open-ended questions helps us gather more information and clarify the other party's positioning.
- **Paraphrasing** involves repeating back what the other party has said in our own words.
- **Positive framing** focuses on the positives of the proposals rather than the drawbacks
- **Reframing** tries to change the way that a proposal is perceived to find common ground or a new opportunity.

Review Questions

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/effectivenegotiations/?p=235#h5p-6

OpenAI. (2024, June 3). *ChatGPT*. [Large language model]. https://chat.openai.com/chat

Prompt: Create five multiple-choice questions based on the content in the attached file to check readers' knowledge of the content.

CHAPTER 7: THE ART OF PERSUASION

Chapter Overview

[7.1 Persuasion in Negotiation]
[7.2 Common Persuasion Tactics]
[7.3 Chapter Summary and Review]

7.1 Persuasion in Negotiation

Learning Objective

1. Understand the concept of persuasion and its role in negotiation.

Persuasion is the art of influencing the thoughts and actions of others through specific strategies. Just like a dance, persuasion is also an art. It can be likened to leading the dance. We must remember, though, that persuading is not the same as forcing or coercing the other party into thinking or acting in a certain way; rather, it is about encouraging voluntary change through specific persuasive strategies.

Imagine a dance where one dance partner pulls the other dancer across the floor versus leading them gracefully through the dance. We want our persuasion to be graceful and beautiful so that the other party is unaware of our persuasive power. This chapter will focus on the Six Laws of Persuasion proposed by Robert Cialdini (1993) and how we can apply these principles to our negotiations.

7.2 Common Persuasion Tactics

Learning Objective

2. Identify common persuasion tactics.

The Six Laws of Persuasion proposed by Robert Cialdini (1993) are:

Reciprocity	Commitment and Consistency	Liking
Scarcity	Authority	Social Proof

Reciprocity

Cialdini's first persuasion principle is **reciprocity**. We can think of this principle as "give and take." If we focus on our dance, consider the idea of how one dance partner leads and the other follows. This creates a harmonious dance through mutual understanding and exchange. If both partners tried to lead at the same time, harmony would be lost. Similarly, if both partners chose to follow at the same time, nothing would really happen as each would be waiting for the other to make the first move.

Negotiations are a dance of give and take. If you want to persuade the other party to give you something, you must give them something as well. For instance, if there is a specific aspect of the negotiation that you are unwilling to concede on, think about where you might be more willing to concede instead. By offering a concession to the other party, they may be more influenced to concede on the point that matters most to you as a reciprocation of your concession and goodwill. It goes back to the point that we considered at the beginning: negotiations are all about creating value through balance.

Commitment and Consistency

The second principle focuses on commitment and consistency. **Commitment and consistency** are both important in a negotiation because they can persuade the other party to slowly come around to our position or point of view. For instance, if we propose an idea that the other party cannot agree to, we can try to persuade them by putting forward a series of smaller changes or commitments that the other party may agree to. As they slowly agree, the changes begin to add up, and eventually, the small agreements may lead to them accepting the larger concession. Similarly, if we want to change the entire dance or dance style, the other party may not agree. But if we slowly change the steps, eventually, the entire dance will change without a lot of pushback.

Liking

The next principle we will discuss is the law of **liking**. Would you rather dance with a partner you like or dislike? Similarly, we are more likely to negotiate or be persuaded by individuals that we like. What does this mean for us? We need to focus on building rapport and a positive relationship with the other party. The more that they like us, the more likely they are to agree with our point of view.

Scarcity

Scarcity is all about rare, unique, or limited benefits. Think about a dancer who can perform a unique move that no one else can. We would rather dance with them or watch them perform rather than someone who can only perform dance moves that are more general. The same idea applies to negotiation. The more that things are rare or diminishing, the more appealing they will be to us. Have you ever purchased a car that was a limited-edition model or the last one of that type on the lot? If you have, you can probably remember that you were willing to pay more and concede more on the deal because the chance of losing it was higher. The less there is of something, or the less time we have to make a decision, can help us by making that particular item or decision more desirable for the other party.

Authority

Credentials, credibility, and knowledge are all factors that persuade us to listen to an individual. We would listen to our dance instructors because we believe that they have the expertise or authority to tell us how to dance. What does this mean for us in negotiations? We need to establish our credibility or emphasize our credentials to persuade the other party by making our arguments appear stronger and more appealing. We don’t usually listen to individuals who cannot back up their position with knowledge or experience, so we need to focus on establishing that authority or credibility to have more persuasive power.

Social Proof

The final factor or principle of persuasion is social proof. The **social proof** relies on the idea that we like to be a part of something others are a part of. We want to belong, and we want to belong to something that already exists because it signals that it must be doing something right. If we can demonstrate that other parties have agreed to a specific proposal, it makes our proposal more persuasive. We want to leverage the power of social and group influence to influence the behaviour of the parties that we are negotiating with. You want to make the other party think, if others are agreeing than it must be right.

7.3 Chapter Summary and Review

Summary

This chapter explores the concept of persuasion and its crucial role in negotiations. Persuasion involves influencing others' thoughts and actions through strategic methods, aiming for voluntary change rather than coercion. The chapter introduces Robert Cialdini's Six Laws of Persuasion, which provide a framework for effectively applying persuasive techniques in negotiations. These principles help create a harmonious and influential negotiation environment, similar to how a skilled dancer leads their partner gracefully rather than through force.

The chapter details Cialdini's six principles of persuasion: **Reciprocity**, which involves a give-and-take approach to encourage concessions; **Commitment and Consistency**, which leverages gradual agreement to gain support for larger proposals; **Liking**, which emphasizes the importance of building rapport and positive relationships; **Scarcity**, which highlights the increased value of rare or limited options; **Authority**, which underscores the importance of establishing credibility; and **Social Proof**, which uses the influence of others' approval to enhance the appeal of a proposal. Each principle serves as a strategic tool to persuade effectively and build agreement during negotiations.

OpenAI. (2024, June 12). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create a summary of the chapter content in the attached file in no more than two paragraphs.

Key Terms

- **Authority:** Credentials, credibility, and knowledge are all factors that persuade us to listen to an individual. We need to establish our credibility or emphasize our credentials to persuade the other party by making our arguments appear stronger and more appealing.
- **Commitment and consistency** are both important in a negotiation because they can persuade the other party to slowly come around to our position or point of view.
- **Liking:** we are more likely to negotiate or be persuaded by individuals that we like.
- **Persuasion** is the art of influencing the thoughts and actions of others through specific strategies.

- **Reciprocity**: We can think of this principle as “give and take.”
- **Scarcity** is all about rare, unique, or limited benefits.
- **Social proof** relies on the idea that we like to be a part of something others are a part of. We want to belong, and we want to belong to something that already exists because it signals that it must be doing something right.

Review Questions

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/effectivenegotiations/?p=239#h5p-7

OpenAI. (2024, June 3). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create five multiple-choice questions based on the content in the attached file to check readers’ knowledge of the content.

CHAPTER 8: MANAGING MULTI-PARTY NEGOTIATIONS

Chapter Overview

8.1 Challenges in Multi-Party Negotiations
8.2 Managing Multi-Party Interests and Discussions
8.3 Coalition Building in Multi-Party Negotiations
8.4 Chapter Summary and Review

8.1 Challenges in Multi-Party Negotiations

Learning Objective

1. Identify the challenges unique to multi-party negotiations.

Recall the four key elements of negotiations from Chapter 1:

Two or more parties

Interdependent

Conflict of interest

Give and take

So far, our discussions have focused primarily on negotiations between two parties. Now, we focus on multi-party negotiations involving more than two parties.

Multi-party Negotiations

Multi-party negotiations bring unique challenges. As we add more parties, the complexity of interests and goals increases. We must balance the competing interests of multiple parties, leading to increased diversity and complexity of goals that need to be managed and harmonized to reach a mutually beneficial solution. Imagine creating a unique dance with the best dancers from various styles.

Each dancer has their own style, choreography, and preferences that need to be managed to create a seamless performance. We could allow each dancer to perform their own choreography to the same music or create a new choreography with unique moves. Regardless, we need to find synergies and harmonies across all parties to make this complex interaction work.

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Another challenge in multi-party negotiations is increased communication barriers. In a traditional setting with one party, we may experience information overload from the sheer amount of information we need to process, listen to, and share. Adding more parties increases the information, which can overwhelm us during a negotiation, much like a stage with too many dancers can create chaos.

Finally, more parties make it harder to reach a decision. We need to consider whether to make decisions based on majority rule or consensus, adding another layer of complexity.

8.2 Managing Multi-Party Interests and Discussions

Learning Objective

2. Develop strategies for managing multiple interests and facilitating multi-party discussions.

When thinking about multi-party negotiations, it is useful to revisit the stages of negotiation. In the preparatory stages, focus on stakeholder analysis to understand each party's strengths, weaknesses, interests, and positions. This analysis helps identify which parties are useful in achieving our individual goals. Success in multi-party negotiations also depends on setting clear goals or objectives at the outset. With more parties, it becomes even more important that all parties are aligned on the end goal. In our dance analogy, we need to set the tone with the music choice, length of the dance, type of audience, and purpose of the dance to ensure everyone understands the goals.

Active listening, communication, emotional intelligence, problem-solving, and decision-making become even more important in multi-party negotiations. We need to listen better, communicate better, and understand our parties better because the negotiation is more complex. Problem-solving and decision-making are crucial because we need solutions that appeal to more complex interests. Effective decision-making skills are essential as decision-making becomes more difficult and time-consuming with more parties. Clarifying and summarizing are key tactics to ensure all parties remain on the same page and aware of the overarching goals.

8.3 Coalition Building in Multi-Party Negotiations

Learning Objective

3. Assess the role of coalition building in multi-party negotiations.

Coalitions can be defined as two or more parties who agree to cooperate to achieve some mutually desirable goal. In negotiations, forming a coalition may be a way for an individually weaker party to gain more power or influence. Coalitions are complex, relying on both cooperative and competitive behaviours depending on the relationships. They tend to cooperate with fellow coalition members and compete with other coalitions. However, these behaviours can also be reversed, adding to the complexity of coalitions. For instance, we may compete within our own coalition to allocate resources and/or cooperate with other coalitions as a means of gaining more power. This is why coalitions are often seen as unstable groups that adjust their behaviours based on their end goal or objective.

The key characteristics of coalitions include:

- Often form one member at a time
- Tend to be formed independently of formal organizational structure
- Often, they are dependent on persuasion and trust

Coalitions are a unique concept in negotiations in that it is often debated whether they help or hurt the achievement of mutually beneficial solutions, mainly due to their high levels of complexity, which we will discuss in more detail below.

There are three key sources or factors of complexity when it comes to coalitions: informational, procedural and social.

Informational complexity refers to the idea that we now have much more information to keep track of (more interests, positions, perceptions, strategies, etc.). This can become very challenging, especially when we are trying to figure out a mutually beneficial solution that fits all the requested or important parameters for the coalition.

We also may encounter complexities from a **procedural** standpoint. Like our discussion of multi-party negotiations, we now need to figure out what kind of process will allow everyone to have an opportunity to voice their opinions and be a part of the discussion.

Finally, coalitions have **social complexity**. We need to be cognizant of the fact that individuals not only behave differently as more groups are added, but they also behave differently in groups. This adds to the complexity of the negotiation because there are various group effects on both individual perceptions and behaviours. So, we need to be aware of how the group dynamic is potentially influencing us and keep a check on our perceptions and behaviours, potentially by engaging with individuals outside of the group as well.

Remember, coalitions are like a dance troupe. We need to manage our internal dynamics and ensure that all our dancers are in sync and motivated. However, we also need to navigate the relationships across dance troupes so that we can have a seamless performance with all parties.

Coalitions from "Multi-Party Negotiation and Power" from BUS403: Negotiations and Conflict Management (2016.A.01) by MIT Open CourseWare is shared under a Creative Commons Attribution NonCommerical ShareAlike license.

8.4 Chapter Summary and Review

Summary

This chapter focuses on managing multi-party negotiations, which present unique challenges compared to traditional two-party negotiations. As the number of parties increases, so does the complexity of balancing diverse interests and goals. This complexity is akin to choreographing a dance involving multiple dancers with different styles—each must harmonize their movements to create a cohesive performance. Additionally, communication becomes more challenging, and reaching decisions is complicated by the need to consider multiple perspectives, making it essential to decide whether to base decisions on majority rule or consensus.

The chapter also emphasizes the importance of strategic preparation, including stakeholder analysis and clear goal-setting, to navigate multi-party discussions effectively. Essential skills such as active listening, communication, emotional intelligence, problem-solving, and decision-making become even more critical. The chapter also explores the role of coalition building in multi-party negotiations, where coalitions can add layers of complexity, both within the coalition and in interactions with other groups. Understanding the informational, procedural, and social complexities of coalitions is crucial for managing them effectively, ensuring all parties work together smoothly, much like managing the dynamics of a dance troupe.

OpenAI. (2024, August 20). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create a summary of the chapter content in the attached file in no more than two paragraphs.

Key Terms

- **Coalitions** can be defined as two or more parties who agree to cooperate to achieve some mutually desirable goal. In negotiations, forming a coalition may be a way for an individually weaker party to gain more power or influence.
- **Informational complexity** refers to the idea that we now have much more information to keep track of (more interests, positions, perceptions, strategies, etc.)

- **Procedural Complexity**: Refers to the challenge of determining a process that allows everyone the opportunity to voice their opinions and be part of the discussion in a coalition
- **Social Complexity**: Refers to the fact that individuals not only behave differently as more groups are added but also behave differently within groups.

Review Questions

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/effectivenegotiations/?p=283#h5p-8

OpenAI. (2024, August 20). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create five multiple-choice questions based on the content in the attached file to check readers' knowledge of the content.

CHAPTER 9: ETHICAL CONSIDERATIONS

Chapter Overview

9.1 Ethics in Negotiation
9.2 Understanding Unethical Behavior in Negotiations
9.3 Avoiding Mistakes in Negotiations
9.4 Chapter Summary and Review

9.1 Ethics in Negotiation

Learning Objective

1. Identify the importance of ethics in negotiation.

The importance of trust and respect between dance partners cannot be underestimated. These elements ensure the partners remain in sync and avoid missteps in their dance performance. Similarly, **ethics in negotiations** ensure that the process is fair and respectful, building trust and potentially a long-term relationship. Adhering to ethical standards throughout our negotiations allows us to create an environment of mutual respect and trust, which can facilitate the negotiation process and is crucial to ensuring that both parties follow through on their commitments to one another.

Like in a dance, each dancer is mindful of how their movements and decisions impact their partner; we must be mindful of how our actions and decisions may have ethical implications for the negotiation. And yet, the question we often ask ourselves during negotiation is, “How far are we willing to go to get what we want?”.

9.2 Understanding Unethical Behavior in Negotiations

Learning Objective

2. Understand unethical behaviour in negotiations.

Every dance will have some missteps or a wrong step, much like our negotiations may have some unethical or, at the very least, questionable behaviours. Understanding what these behaviours are will make us more aware of when either we or the other party might be engaging in said behaviours.

Selective Disclosure

This behaviour involves highlighting positive information and downplaying (or omitting) negative information. Imagine a dance partner who only showcases their best moves during dance practice and never shows the steps they either cannot complete or often make mistakes with. This may seem advantageous in the short run, but eventually, they will have to perform those steps that they have issues with, and the truth will come out.

Misrepresentation

This behaviour involves negotiators misstating facts or their position (e.g. they are willing to accept a lower position than they originally stated). Think of a dancer who pretends that they already know the routine but haven't learned or practiced it enough. Especially if the stakes are high, the consequences can be disastrous for both parties.

Deception and Lying

This behaviour involves negotiators providing factually incorrect information that leads to incorrect conclusions. Imagine if you are dancing with someone who leads you into the wrong step or moves on purpose to make you look bad. This misstep disrupts the flow of the dance, much like deception disrupts the trust and respect in the relationship.

False Threats and False Promises

This behaviour involves negotiators misleading the other party regarding actions they might take at the end of the negotiation process. This one is easy, and we have all encountered it at some point—someone making a promise that they do not intend to keep. We have probably encountered it in group projects, at work, etc. A dancer who pretends to commit to the performance and then doesn't show up to the actual performance would be guilty of false promises.

Inflicting Direct or Indirect Harm

This behaviour involves negotiators intentionally sabotaging the other party's chance of success. Finally, this could be argued as the worst behaviour because it intentionally harms the other party. It would be like your dance partner intentionally stepping on your feet to hurt you so that you couldn't complete the dance.

One thing to keep in mind is the difference between unethical and illegal. A behaviour could still be legal and on the right side of the law, even though it is unethical.

"Issues in Negotiation" from Organizational Behavior and Human Relations by Freedom Learning Group. Provided by Lumen Learning and shared under a Creative Commons Attribution license unless otherwise noted.

9.3 Avoiding Mistakes in Negotiations

Learning Objective

3. Use decision-making frameworks to avoid mistakes in negotiations.

Preparation and planning are key to avoiding common negotiation mistakes, but even the most experienced negotiator can make them. Perceptual bias and poor decisions account for most of them. Let's look at a few examples:

Examples

- **Winner's curse.** This is when a negotiator makes a high offer quickly, and it's accepted just as quickly, making the negotiator feel as though he is being cheated. Lack of information and expertise are chief among the issues that cause this mistake.
- **Mythical fixed pie.** The negotiator assumes that what's good for the other side is bad for his side. For instance, imagine two parties that want an orange. If a negotiator makes the mythical fixed pie mistake, he divides that orange in half and gives each party a piece. He's let competitiveness get in the way of coming up with a creative solution, and if he'd listened, he'd have understood that one party wanted the meat of the orange and the other wanted the rind.
- **Overconfidence.** The negotiator puts too much stock in his ability to be correct and thus uses high anchors for his initial offers and adjustments. His lack of information and distorted self-perception will cost him a fairly negotiated deal.
- **Irrational escalation of commitment.** This is when the negotiator continues a course of action long after it's been proven to be the wrong choice. Causes of this include an insatiable need to win and ego, and it shows a lack of commitment to actually arriving at a fair deal.

Again, preparation and planning can help a negotiator avoid these issues, but practice is another way to get better at avoiding mistakes!

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9.4 Chapter Summary and Review

Summary

This chapter focuses on the critical role of ethics in negotiations, emphasizing that ethical conduct builds trust and respect between parties, much like the synchronization needed between dance partners. Ethical behavior ensures fairness and fosters long-term relationships, while unethical practices, such as selective disclosure, misrepresentation, deception, false promises, and intentionally harming others, can damage trust and disrupt the negotiation process. The chapter also highlights the importance of distinguishing between unethical and illegal actions, noting that some behaviors may be legal but still ethically questionable.

Additionally, the chapter explores common mistakes in negotiation, such as the winner's curse, mythical fixed pie assumption, overconfidence, and irrational escalation of commitment. These errors often stem from perceptual biases and poor decision-making. To avoid these pitfalls, the chapter advocates for thorough preparation, careful planning, and ongoing practice to refine negotiation skills and ensure fair and successful outcomes.

OpenAI. (2024, August 20). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create a summary of the chapter content in the attached file in no more than two paragraphs.

Key Terms

- **Deception and Lying:** This behaviour involves negotiators providing factually incorrect information that leads to incorrect conclusions.
- **Ethics in negotiations** ensure that the process is fair and respectful, building trust and potentially a long-term relationship.
- **False Threats and False Promises:** This behaviour involves negotiators misleading the other party as to actions they might take at the end of the negotiation process.
- **Inflicting Direct or Indirect Harm:** This behaviour involves negotiators intentionally sabotaging the other party's change of success.

- **Irrational escalation of commitment.** This is when the negotiator continues a course of action long after it's been proven to be the wrong choice.
- **Misrepresentation:** This behaviour involves negotiators misstating facts or their position (e.g. they are willing to accept a lower position than they originally stated).
- **Mythical fixed pie.** The negotiator assumes that what's good for the other side is bad for his side
- **Overconfidence.** The negotiator puts too much stock in his ability to be correct, and thus uses high anchors for his initial offers and adjustments.
- **Selective Disclosure:** This behaviour involves highlighting positive information and downplaying (or omitting) negative information.
- **Winner's curse.** This is when a negotiator makes a high offer quickly and it's accepted just as quickly, making the negotiator feel as though he is being cheated.

Review Questions

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/effectivenegotiations/?p=293#h5p-9

OpenAI. (2024, August 20). *ChatGPT.* [Large language model]. https://chat.openai.com/chat

Prompt: Create five multiple-choice questions based on the content in the attached file to check readers' knowledge of the content.

APPENDIX: CONFLICT RESOLUTION

Appendix Overview

A.1.1 Strategies for Handling Conflict
A.1.2 The Benefits of Conflict
A.1.3 Benefits and Drawbacks of Alternative Dispute Resolution
A.1.4 Mediation as an Alternative Dispute Resolution Strategy
A.1.5 Arbitration as an Alternative Dispute Resolution Strategy
A.1.6 Additional Forms of Alternative Dispute Resolution

A.1.1 Strategies for Handling Conflict

Learning Objectives

1. Compare different strategies for handling conflict.

Kenneth Thomas and Ralph Kilmann created the Thomas-Kilmann Conflict Mode Instrument in 1974 to describe five styles for handling conflict: competing, collaborating, compromising, avoiding, and accommodating. They based each style on an individual's appetite for assertiveness and cooperation. Understanding what you hope to gain when you face a workplace conflict or disagreement and what those around you wish to achieve will help you negotiate a beneficial solution.

1. **Competing**: People with a competing style play to win. While other employees may perceive these individuals as aggressive, assertive, bossy, or inconsiderate, competing individuals often do well when a swift decision is in order. When you work with someone with a competitive conflict style, remember they want to win, so position your ideas in a way that makes them think they are winning.
2. **Collaborating:** Collaborators try to create solutions where everyone wins. They take time to think through all options before deciding and are known for their strong relationships with others. However, they may take too long and expend too much effort when deciding. When you work with someone of this style, give them time and space to think through different views and options before forcing them to decide.
3. **Compromising:** In compromises, no one wins outright in a negotiation, but each side achieves something they can tolerate and loses something they may have preferred. Politicians compromise by taking the best ideas from as many parties as possible to create an alternate solution. Remember that parties that compromise may later resent giving up something they value. When you work with someone of this style, decide what is important to you in the negotiation before you begin.
4. **Avoiding:** Conflict avoiders seek any workaround to avoid conflict. Some may perceive conflict avoiders as uncaring, but they may just hope the conflict disappears. Conflict avoidance can hurt relationships and business decisions because the perpetrators often avoid confronting the issue beyond the decision deadline. When you work with someone who avoids conflict, you may have to bring up the issues and suggest solutions.
5. **Accommodating:** Individuals who adopt this style allow the other party to win. This can be a good strategy if you feel you are on the wrong track or want to preserve a relationship. When you work with someone who is accommodating, you may have to ask a lot of questions to discern what their needs are so you can address them.

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A.1.2 The Benefits of Conflict

Learning Objectives

2. Identify the benefits of conflict.

Try looking at conflict beyond simply being something you want to go away quickly. You might see that it has some benefits. Here are some of them:

- Conflict checks our complacency and self-satisfaction simply by making us aware that problems exist.
- Conflict reveals diverse perspectives, getting beyond an either/or worldview, challenging our assumptions and leading to more comprehensive solutions.
- Conflict resolution requires you to tap into your creativity. You learn about yourself and about others, leading to greater emotional intelligence.
- Resolving conflict often opens up new communication avenues and processes. In fact, lack of communication is often the source of conflict.
- Successful conflict resolution can build trust. When people feel heard and when their opinions are recognized and validated, the fair treatment they received makes them more likely to come forward in the future before conflicts have an opportunity to fester.

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A.1.3 Benefits and Drawbacks of Alternative Dispute Resolution

Learning Objectives

3: Understand the benefits and drawbacks of alternative dispute resolution.

Imagine that you've been wronged by a supplier, by your employer, or by a business where you are a customer. You've correctly determined that you have an actionable legal claim. What are you going to do? You probably won't run to the courthouse to file a formal complaint to initiate litigation. This is because litigation is very expensive and time-consuming. Besides, you may wish to continue doing business with the supplier, employer, or business. Perhaps the matter is of a private nature, and you do not want to engage in a public process to determine the outcome. You would like the dispute to be resolved, but you do not want to engage in public, time-consuming, expensive litigation to do it.

A common method of dispute resolution that avoids many of the challenges associated with litigation is alternative dispute resolution. Alternative dispute resolution (ADR) is a term that encompasses many different methods of dispute resolution other than litigation. ADR involves resolving disputes outside of the judicial process, though the judiciary can require parties to participate in specific types of ADR, such as arbitration, for some types of conflicts. Moreover, some ADR methods vest power to resolve the dispute in a neutral party, while other strategies vest that power in the parties themselves. See Figure 1.3, "A Continuum of Different ADR Methods," for a continuum of different ADR methods based on where the power to solve the dispute is vested.

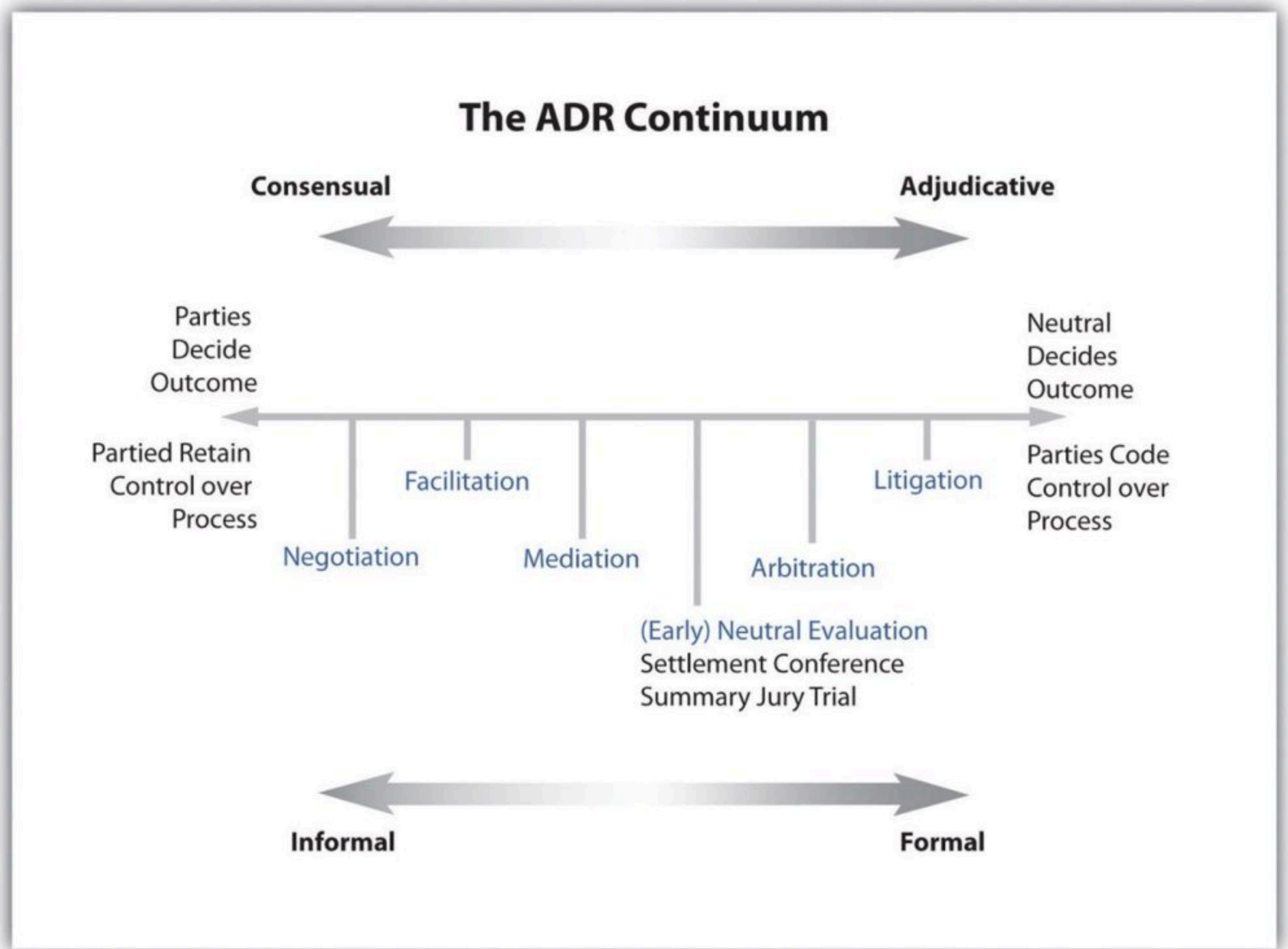
The ADR Continuum
Consensual
Adjudicative
Parties Decide Outcome
Neutral Decides Outcome
Partied Retain Control over Process
Parties Code Control over Process
Negotiation
Facilitation
Mediation
(Early) Neutral Evaluation
Settlement Conference
Summary Jury Trial
Arbitration
Litigation
Informal
Formal

Figure 1.3 A Continuum of Different ADR Methods. Source: Adapted from New York State Unified Court System.

Image Description

The ADR Continuum depicts a spectrum of Alternative Dispute Resolution (ADR) methods. The continuum is represented by a horizontal arrow that ranges from "Consensual" on the left to "Adjudicative" on the right.

Left Side (Consensual):

- Characteristics: Parties decide the outcome, and parties retain control over the process.
- Methods listed: Negotiation, Facilitation, Mediation

Right Side (Adjudicative):

- Characteristics: A neutral party decides the outcome and parties cede control over the process.
- Methods listed: (Early) Neutral Evaluation, Arbitration, Litigation

Middle Section:

Contains a series of vertical lines below the horizontal arrow that correspond to different ADR methods, moving

from more informal to more formal as you move rightward:
Informal on the left (closer to Consensual):

- Negotiation
- Facilitation
- Mediation

Neutral in the middle:

- (Early) Neutral Evaluation: Settlement Conference and Summary Jury Trial

Formal on the right (closer to Adjudicative):

- Arbitration
- Litigation

This continuum helps to illustrate the varying degrees of formality, party control, and decision-making authority associated with different ADR methods.

Common methods of ADR include negotiation, mediation, and arbitration. Lesser used methods of ADR, which include minitrials, hybrid forms of mediation-arbitration (with elements of both), and collaborative goal-oriented processes. ADR often resolves disputes among businesses, employers and employees, and businesses and consumers. ADR can also be used in many other types of conflicts. For instance, ADR strategies can be used in domestic law cases, such as divorce, or in international legal issues, such as issues relating to transboundary pollution.

"4.4 Other Methods of Alternative Dispute Resolution" from The Legal and Ethical Environment of Business v. 1.0 by Saylor Academy is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 3.0 License, except where otherwise noted.

A.1.4 Mediation as an Alternative Dispute Resolution Strategy

Learning Objectives

4. Explore the process of mediation as an alternative dispute resolution (ADR) strategy.

Mediation is a method of ADR in which parties work to form a mutually acceptable agreement. Like negotiation, parties in mediation do not vest authority to decide the dispute in a neutral third party. Instead, this authority remains with the parties themselves, who are free to terminate mediation if they believe it is not working. Often, when parties terminate mediation, they pursue another form of ADR, such as arbitration, or they choose to litigate their claims in court. Mediation is appropriate only for parties who are willing to participate in the process. Like negotiation, mediation seeks a "win-win" outcome for the parties involved. Additionally, mediation is confidential, which can be an attractive attribute for people who wish to avoid the public nature of litigation. The mediation process is usually much faster than litigation, and the associated costs can be substantially less expensive than litigation.

Unlike in many negotiations, a third party is involved in mediation. Indeed, a neutral mediator is crucial to the mediation process. Mediators act as a go-between for the parties, seeking to facilitate the agreement. Requirements to be a mediator vary by state. There are no uniform licensing requirements, but some states require specific training or qualifications for a person to be certified as a mediator. Mediators do not provide advice on the subject matter of the dispute. In fact, the mediators may not possess any subject-matter expertise concerning the nature of the dispute. However, many mediators are trained in conflict resolution, and this allows them to employ methods to discover common goals or objectives, set aside issues that are not relevant, and facilitate an agreement into which the parties will voluntarily enter. Mediators try to find common ground by identifying common goals or objectives and by asking parties to set aside the sometimes emotionally laden obstacles that are not relevant to the sought-after agreement itself.

Disputants choose their mediator. This choice is often made based on the mediator's reputation as a skilled conflict resolution expert, professional background, training, experience, cost, and availability. After a mediator is chosen, the parties prepare for mediation. For instance, prior to the mediation process, the mediator typically asks the parties to sign a mediation agreement. This agreement may embody the parties' commitments to proceed in good faith, understanding of the voluntary nature of the process, commitments to confidentiality, and recognition of the mediator's role of neutrality rather than one of legal counsel. At the outset, the mediator typically explains the process that the mediation will observe. The parties then proceed according to that plan, which may include opening statements, face-to-face communication, or indirect communication through the mediator. The mediator may suggest options for resolution and, depending on his or her skill, may be able to suggest alternatives not previously considered by the disputants.

Mediation is often an option for parties who cannot negotiate with each other but who could reach a mutually beneficial or mutually acceptable resolution with the assistance of a neutral party to help sort out the issues to find a resolution that achieves the parties' objectives. Sometimes, parties in mediation retain attorneys, but this is not required. If parties do retain counsel, their costs for participating in the mediation will obviously increase.

In business, mediation is often the method of ADR used in disputes between employers and employees about topics such as workplace conditions, wrongful discharge, or advancement grievances. Mediation is used in disputes between businesses, such as in contract disputes. Mediation is also used for disputes arising between businesses and consumers, such as in medical malpractice cases or healthcare disputes.

The Benefits

Like other forms of dispute resolution, mediation has benefits and drawbacks. The benefits are many. They include the relative expediency of reaching a resolution, the reduced costs as compared to litigation, the ability for parties that are unable to communicate with each other to resolve their dispute using a nonadversarial process, the imposition of rules on the process by the mediator to keep parties "within bounds" of the process, confidentiality, and the voluntary nature of participation. Of course, the potential for a "win-win" outcome is a benefit. Attorneys may or may not be involved, and this can be viewed as either a benefit or a drawback, depending on the circumstances.

The Drawbacks

Drawbacks to mediation also exist. For example, if disputants are not willing to participate in the mediation process, the mediation will not work. This is because mediation requires voluntary participation between willing parties to reach a mutually agreeable resolution. Additionally, even after considerable effort by the parties in dispute, the mediation may fail. This means that the resolution of the problem may have to be postponed until another form of ADR is used, or until the parties litigate their case in court. Since mediators are individuals, they have different levels of expertise in conflict resolution, and they possess different backgrounds and worldviews that might influence the manner in which they conduct mediation. Parties may be satisfied with one mediator but not satisfied in subsequent mediations with a different mediator. Even if an agreement is reached, the mediation itself is usually not binding. Parties can later become dissatisfied with the agreement reached during mediation and choose to pursue the dispute through other ADR methods or through litigation. For this reason, parties often enter into a legally binding contract that embodies the terms of the resolution of the mediation immediately on conclusion of the successful mediation. Therefore, the terms of the mediation can become binding if they are reduced to such a contract, and some parties may find this to be disadvantageous to their interests. Of course, any party that signs such an agreement would do so voluntarily. However, in some cases, if legal counsel is not involved, parties may not fully understand the implications of the agreement that they are signing.

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A.1.5 Arbitration as an Alternative Dispute Resolution Strategy

Learning Objectives

5. Explore the process of arbitration as an alternative dispute resolution (ADR) strategy.

Arbitration is a method of ADR in which parties vest authority in a third-party neutral decision maker who will hear their case and issue a decision, which is called an arbitration award.

An arbitrator presides over arbitration proceedings. Arbitrators are neutral decision-makers who are often experts in the law and subject matter at issue in the dispute. Their decisions do not form a binding precedent. Arbitrators may be members of the judiciary, but in arbitrations, they are not judges. Arbitrators act in an analogous capacity to judges in trials. For instance, they determine which evidence can be introduced, hear the parties' cases, and issue decisions. They may be certified by the state in which they arbitrate, and they may arbitrate only certain types of claims. For instance, the Better Business Bureau trains its own arbitrators to hear common complaints between businesses and consumers (B2C).

Participation in the arbitration proceeding is sometimes mandatory. Mandatory arbitration results when disputes arise out of a legally binding contract involving commerce in which the parties agreed to submit to mandatory arbitration. Arbitration is also mandatory when state law requires parties to enter into mandatory arbitration.

Voluntary arbitration also exists, and it is frequently used in business disputes. Sometimes, parties simply agree that they do not want to litigate a dispute because they believe that the benefits of arbitration outweigh the costs of litigation, so they choose voluntary arbitration in hopes of a speedy and relatively inexpensive outcome. Other times, parties are not certain how strong their case is. In such cases, arbitration can seem much more attractive than litigation.

Arbitration awards can be binding or nonbinding. In binding arbitration, the arbitration award is final; therefore, appealing an arbitration award to the judicial system is not available.

Like any other form of dispute resolution, arbitration has certain benefits and drawbacks. Arbitration is an adversarial process like a trial, and it will produce a "winner" and a "loser." Arbitration is more formal than negotiation and mediation and, in many ways, it resembles a trial. Parties present their cases to the arbitrator by introducing evidence. After both sides have presented their cases, the arbitrator issues an arbitration award.

Rules related to arbitration can differ by geographical location and jurisdiction. The rules of procedure that apply to litigation in a trial do not typically apply to arbitration. Specifically, the rules are often less formal or less restrictive on the presentation of evidence and the arbitration procedure. Arbitrators decide which evidence to allow, and they are not required to follow precedents or to provide their reasoning in the final award. In short, arbitrations adhere to rules, but those rules are not the same as rules of procedure for litigation. Regardless of which rules are followed, arbitrations proceed under a set of external rules known to all parties involved in any given arbitration.

Arbitration can be more expensive than negotiation or mediation, but it is often less expensive than litigation. The costly discovery phase of a trial is nonexistent or sharply reduced in arbitration. However, arbitration is not necessarily inexpensive. Parties must bear the costs of the arbitrator, and they typically retain counsel to represent them. Additionally, in mandatory arbitration clause cases, the arbitration may be required to take place in a distant city from one of the disputants. This means that the party will have to pay travel costs and associated expenses during the arbitration proceeding.

Arbitration is faster than litigation, but it is not as private as negotiation or mediation. Unlike mediators, arbitrators are often subject-matter experts in the legal area of dispute. However, as is true for mediators, much depends on the arbitrator’s skill and judgment.

A common issue that arises is whether mandatory arbitration is fair in certain circumstances. It’s easy to imagine that arbitration is fair when both parties are equally situated. For example, business-to-business (B2B) arbitrations are often perceived as fair, especially if businesses are roughly the same size or have roughly equal bargaining power. This is because they will be able to devote approximately the same amount of resources to a dispute resolution, and they both understand the subject under dispute, whatever the commercial issue may be. Moreover, in B2B disputes, the subjects of disputes are commercial issues, which may not implicate deeper social and ethical questions. For example, contract disputes between businesses might involve whether goods are conforming goods or nonconforming goods under the Uniform Commercial Code (UCC). No powerful social or ethical questions arise in such disputes. Indeed, resolving such disputes might be seen as “business as usual” by many commercial enterprises.

However, issues of fairness often arise in business-to-employee (B2E) and business-to-consumer (B2C) situations, particularly where parties with unequal bargaining power have entered into a contract that contains a mandatory arbitration clause. In such cases, the weaker party has no real negotiating power to modify or to delete the mandatory arbitration clause, so that party is required to agree to such a clause if it wants to engage in certain types of transactions.

Additionally, concerns about fairness do not end at contract formation. If a dispute arises and mandatory arbitration is commenced, the unequal power between parties will continue to be an important issue. In the case between a credit card company and an average consumer debtor, the credit card company would clearly be in a more powerful position vis-à-vis the debtor by virtue of the company’s financial strength and all that comes with it, such as experienced attorneys on staff, dispute-resolution experience, and contractual terms that favour it, rather than the consumer debtor. In such cases, if the consumer debtor is the aggrieved party, he may very well decide to drop the matter, especially if the arbitration clause requires arbitration proceedings to occur in a distant city. The credit card company will have vast financial resources as compared to the consumer debtor. Moreover, in this example, the credit card company’s legal counsel will know how to navigate the arbitration process and will have experience in dispute resolution, processes that often confound people who are not trained in law.

Additionally, the list of arbitrators may include people who are dependent on repeat business from the credit card company for their own livelihoods, thereby creating—or at least suggesting—an inherent conflict of interest. Many mandatory arbitration clauses create binding awards on one party while reserving the right to bring a claim in court to the other party. That is, a mandatory arbitration clause may allow the credit card company to appeal an arbitrator's award but to render an award binding on the consumer debtor. Obviously, this would allow the credit card company to appeal an unfavourable ruling while requiring the consumer debtor to abide by an arbitrator's unfavourable ruling. To a consumer debtor, the arbitration experience can seem like a game played on the credit card company's home court—daunting, feckless, and intimidating.

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A.1.6 Additional Forms of Alternative Dispute Resolution

Learning Objectives

6. Discuss additional forms of ADR, including in-house methods and med-arb.

Remember that ADR is a broad term used to denote methods to resolve disputes outside of litigation. This can really be any method, whether or not it bears a specific label or adheres to a particular procedure. For instance, negotiation might be a quick meeting in the hallway between disputants, or it might involve a formal round of negotiations where all parties are represented by legal counsel.

However, when parties are attempting to resolve a dispute, it makes sense for them to agree to a specific procedure for doing so beforehand so that each party understands how to proceed. Negotiation, mediation, and arbitration are the most common forms of ADR. However, these methods might not be appropriate for every dispute. Other forms of ADR exist, ranging from in-house programs to very formal external processes. This section briefly discusses commonly used alternatives to resolving disputes besides negotiation, mediation, arbitration, or litigation.

Some ADR processes or programs are available only to certain groups of people, such as members of a particular organization. For instance, some organizations, like Boeing, have an internal ethics hotline. This hotline is available for employees to report perceived ethics violations that they have observed. Ethics advisors answer employees' questions and follow up on reports that need further investigation. One major benefit is that reporting parties generally (but not always) remain anonymous. Another benefit is that the company has time to redress problems that could give rise to disputes of much greater magnitude if left unaddressed.

An open-door policy is an in-house program that allows company employees to go directly to any level of management to file a complaint or grievance without the threat of retaliation for their reporting. In theory, this policy creates an open atmosphere of trust, and it breaks down class barriers between groups of employees. However, many employees may not feel comfortable in making a complaint about a manager's decision. Moreover, supervisors may not be comfortable with their employees bypassing them to file complaints. Open-door policies sound very good in theory, but they may not work as well in practice.

Another type of in-house program is an ombudsmen's office. These stations generally hear complaints from stakeholders, such as employees or customers. Ombudsmen try to troubleshoot these complaints by investigating and attempting to resolve the issues before they escalate into more formal complaints.

More formal methods of ADR include mediation-arbitration (med-arb), which is essentially a mediation followed by an arbitration. If the mediation does not produce a satisfactory outcome, then the parties submit to arbitration. The neutral party mediating the dispute also serves as the arbitrator if the dispute-resolution process goes that far. Med-arb has the same benefits and drawbacks as mediation and arbitration alone, with some important differences. For instance, parties in a med-arb know that their dispute will be resolved. This is unlike mediation alone, where parties may walk away if they do not think that the mediation is serving their interests. Moreover, the parties in med-arb have an opportunity to reach a win-win outcome as in mediation. However, if they do not reach a satisfactory outcome, then one party will “win,” and one party will “lose” during the arbitration phase. The knowledge that arbitration will definitely follow a failed mediation can be a strong incentive to ensure that the mediation phase of a med-arb works.

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Version History

This page provides a record of edits and changes made to this book since its initial publication. Whenever edits or updates are made in the text, we provide a record and description of those changes here. If the change is minor, the version number increases by 0.1. If the edits involve a number of changes, the version number increases to the next full number.

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