

# Pareto optimality

[Experience](#), [Human Nature](#)



Pareto efficiency, or Pareto optimality, is a concept in economics with applications in engineering and social sciences. The term is named after Vilfredo Pareto, an Italian economist who used the concept in his studies of economic efficiency and income distribution. [citation needed] Given an initial allocation of goods among a set of individuals, a change to a different allocation that makes at least one individual better off without making any other individual worse off is called a Pareto improvement. An allocation is defined as " Pareto efficient" or " Pareto optimal" when no further Pareto improvements can be made.

Pareto efficiency is a minimal notion of efficiency and does not necessarily result in a socially desirable distribution of resources: it makes no statement about equality, or the overall well-being of a society. [1][2] A state of affairs where it is not possible to improve the economic lot of some people without making others worse off; a mercantilist view. The implications of this view in welfare economics are that, once an economy has ceased to grow, it is impossible to increase the wealth of the poor without opposing the Pareto criterion; in other words, without making the rich worse off.

This then becomes an argument for retaining the status quo, even if the distribution of income in society is very uneven. A Pareto improvement, however, occurs if resources can be better utilized so that one group's prosperity increases, but not at a cost to another's. DEFINITION OF NEGOTIATION Negotiation is one of the most common approaches used to make decisions and manage disputes. It is also the major building block for many other alternative dispute resolution procedures.

Negotiation occurs between spouses, parents and children, managers and staff, employers and employees, professionals and clients, within and between organizations and between agencies and the public. Negotiation is a problem-solving process in which two or more people voluntarily discuss their differences and attempt to reach a joint decision on their common concerns. Negotiation requires participants to identify issues about which they differ, educate each other about their needs and interests, generate possible settlement options and bargain over the terms of the final agreement. Successful negotiations generally result in some kind of exchange or promise being made by the negotiators to each other. The exchange may be tangible (such as money, a commitment of time or a particular behavior) or intangible (such as an agreement to change an attitude or expectation, or make an apology). Negotiation is the principal way that people redefine an old relationship that is not working to their satisfaction or establish a new relationship where none existed before.

Because negotiation is such a common problem-solving process, it is in everyone's interest to become familiar with negotiating dynamics and skills. This section is designed to introduce basic concepts of negotiation and to present procedures and strategies that generally produce more efficient and productive problem solving. CONDITIONS FOR NEGOTIATION A variety of conditions can affect the success or failure of negotiations. The following conditions make success in negotiations more likely. Identifiable parties who are willing to participate.

The people or groups who have a stake in the outcome must be identifiable and willing to sit down at the bargaining table if productive negotiations are to occur. If a critical party is either absent or is not willing to commit to good faith bargaining, the potential for agreement will decline. Interdependence. For productive negotiations to occur, the participants must be dependent upon each other to have their needs met or interests satisfied. The participants need either each other's assistance or restraint from negative action for their interests to be satisfied.

If one party can get his/her needs met without the cooperation of the other, there will be little impetus to negotiate. Readiness to negotiate. People must be ready to negotiate for dialogue to begin. When participants are not psychologically prepared to talk with the other parties, when adequate information is not available, or when a negotiation strategy has not been prepared, people may be reluctant to begin the process. Means of influence or leverage. For people to reach an agreement over issues about which they disagree, they must have some means to influence the attitudes and/or behavior of other negotiators.

Often influence is seen as the power to threaten or inflict pain or undesirable costs, but this is only one way to encourage another to change. Asking thought-provoking questions, providing needed information, seeking the advice of experts, appealing to influential associates of a party, exercising legitimate authority or providing rewards are all means of exerting influence in negotiations. Agreement on some issues and interests. People must be

able to agree upon some common issues and interests for progress to be made in negotiations.

Generally, participants will have some issues and interests in common and others that are of concern to only one party. The number and importance of the common issues and interests influence whether negotiations occur and whether they terminate in agreement. Parties must have enough issues and interests in common to commit themselves to a joint decision-making process. Will to settle. For negotiations to succeed, participants have to want to settle. If continuing a conflict is more important than settlement, then negotiations are doomed to failure.

Often parties want to keep conflicts going to preserve a relationship (a negative one may be better than no relationship at all), to mobilize public opinion or support in their favor, or because the conflict relationship gives meaning to their life. These factors promote continued division and work against settlement. The negative consequences of not settling must be more significant and greater than those of settling for an agreement to be reached. Unpredictability of outcome. People negotiate because they need something from another person.

They also negotiate because the outcome of not negotiating is unpredictable. For example: If, by going to court, a person has a 50/50 chance of winning, s/he may decide to negotiate rather than take the risk of losing as a result of a judicial decision. Negotiation is more predictable than court because if negotiation is successful, the party will at least win something. Chances for a decisive and one-sided victory need to be

unpredictable for parties to enter into negotiations. A sense of urgency and deadline. Negotiations generally occur when there is pressure or it is urgent to reach a decision.

Urgency may be imposed by either external or internal time constraints or by potential negative or positive consequences to a negotiation outcome.

External constraints include: court dates, imminent executive or administrative decisions, or predictable changes in the environment. Internal constraints may be artificial deadlines selected by a negotiator to enhance the motivation of another to settle. For negotiations to be successful, the participants must jointly feel a sense of urgency and be aware that they are vulnerable to adverse action or loss of benefits if a timely decision is not reached.

If procrastination is advantageous to one side, negotiations are less likely to occur, and, if they do, there is less impetus to settle. No major psychological barriers to settlement. Strong expressed or unexpressed feelings about another party can sharply affect a person's psychological readiness to bargain. Psychological barriers to settlement must be lowered if successful negotiations are to occur. Issues must be negotiable. For successful negotiation to occur, negotiators must believe that there are acceptable settlement options that are possible as a result of participation in the process.

If it appears that negotiations will have only win/lose settlement possibilities and that a party's needs will not be met as a result of participation, parties will be reluctant to enter into dialogue. The people must have the authority

to decide. For a successful outcome, participants must have the authority to make a decision. If they do not have a legitimate and recognized right to decide, or if a clear ratification process has not been established, negotiations will be limited to an information exchange between the parties. A willingness to compromise. Not all negotiations require compromise.

On occasion, an agreement can be reached which meets all the participants' needs and does not require a sacrifice on any party's part. However, in other disputes, compromise--willingness to have less than 100 percent of needs or interests satisfied--may be necessary for the parties to reach a satisfactory conclusion. Where the physical division of assets, strong values or principles preclude compromise, negotiations are not possible. The agreement must be reasonable and implementable. Some settlements may be substantively acceptable but may be impossible to implement.

Participants in negotiations must be able to establish a realistic and workable plan to carry out their agreement if the final settlement is to be acceptable and hold over time. External factors favorable to settlement. Often factors external to negotiations inhibit or encourage settlement. Views of associates or friends, the political climate of public opinion or economic conditions may foster agreement or continued turmoil. Some external conditions can be managed by negotiators while others cannot. Favorable external conditions for settlement should be developed whenever possible.

Resources to negotiate. Participants in negotiations must have the interpersonal skills necessary for bargaining and, where appropriate, the money and time to engage fully in dialogue procedures. Inadequate or

unequal resources may block the initiation of negotiations or hinder settlement. **WHY PARTIES CHOOSE TO NEGOTIATE** The list of reasons for choosing to negotiate is long. Some of the most common reasons are to:

- Gain recognition of either issues or parties;
- Test the strength of other parties;
- Obtain information about issues, interests and positions of other parties;
- Educate all sides about a particular view of an issue or concern;
- Ventilate emotions about issues or people;
- Change perceptions;
- Mobilize public support;
- Buy time;
- Bring about a desired change in a relationship;
- Develop new procedures for handling problems;
- Make substantive gains;
- Solve a problem.

**WHY PARTIES REFUSE TO NEGOTIATE** Even when many of the preconditions for negotiation are present, parties often choose not to negotiate. Their reasons may include:

- Negotiating confers sense and legitimacy to an adversary, their goals and needs;
- Parties are fearful of being perceived as weak by a constituency, by their adversary or by the public;
- Discussions are premature. There may be other alternatives available--informal communications, small private meetings, policy revision, decree, elections;
- Meeting could provide false hope to an adversary or to one's own constituency;
- Meeting could increase the visibility of the dispute;
- Negotiating could intensify the dispute;
- Parties lack confidence in the process;
- There is a lack of jurisdictional authority; Authoritative powers are unavailable or reluctant to meet;
- Meeting is too time-consuming;
- Parties need additional time to prepare;
- Parties want to avoid locking themselves into a position; there is still time to escalate demands and to intensify conflict to their advantage.



**DEFINITIONS** For negotiations to result in positive benefits for all sides, the negotiator must define what the problem is and what each party wants. In defining the goals of negotiation, it is important to distinguish between issues, positions, interests and settlement options. An issue is a matter or question parties disagree about. Issues can usually be stated as problems. For example, " How can wetlands be preserved while allowing some industrial or residential development near a stream or marsh? " Issues may be substantive (related to money, time or compensation), procedural (concerning the way a dispute is handled), or psychological (related to the effect of a proposed action).

- Positions are statements by a party about how an issue can or should be handled or resolved; or a proposal for a particular solution.

A disputant selects a position because it satisfies a particular interest or meets a set of needs.

- Interests are specific needs, conditions or gains that a party must have met in an agreement for it to be considered satisfactory. Interests may refer to content, to specific procedural considerations or to psychological needs.
- Settlement Options--possible solutions which address one or more party's interests. The presence of options implies that there is more than one way to satisfy interests.

#### SELECTING A GENERAL NEGOTIATION APPROACH

The negotiator will need to select a general negotiation approach. There are many techniques, but the two most common approaches to negotiation are positional bargaining and interest-based bargaining. Positional Bargaining Positional bargaining is a negotiation strategy in which a series of positions,

alternative solutions that meet particular interests or needs, are selected by a negotiator, ordered sequentially according to preferred outcomes and presented to another party in an effort to reach agreement. The first or opening position represents that maximum gain hoped for or expected in the negotiations.

Each subsequent position demands less of an opponent and results in fewer benefits for the person advocating it. Agreement is reached when the negotiators' positions converge and they reach an acceptable settlement range. WHEN IS POSITIONAL BARGAINING OFTEN USED? • When the resource being negotiated is limited (time, money, psychological benefits, etc. ). • When a party wants to maximize his/her share in a fixed sum pay off. • When the interests of the parties are not interdependent, are contradictory or are mutually exclusive. • When current or future relationships have a lower priority than immediate substantive gains.

ATTITUDES OF POSITIONAL BARGAINERS • Resource is limited. • Other negotiator is an opponent; be hard on him/her. • Win for one means a loss for the other. • Goal is to win as much as possible. • Concessions are a sign of weakness. • There is a right solution--mine. • Be on the offensive at all times. HOW IS POSITIONAL BARGAINING CONDUCTED? 1. Set your target point--solution that would meet all your interests and result in complete success for you.

To set the target point, consider: • Your highest estimate of what is needed. (What are your interests? ) • Your most optimistic assumption of what is possible. • Your most favorable assessment of your bargaining

skill. 2. Make target point into opening position. 3. Set your bottom line or resistance point--the solution that is the least you are willing to accept and still reach agreement. To identify your bottom line, consider:

- Your lowest estimate of what is needed and would still be acceptable to you.
  - Your least optimistic assumption of what is possible.      Your least favorable assessment of your bargaining skill relative to other negotiators.
  - Your Best Alternative To a Negotiated Agreement (BATNA).
4. Consider possible targets and bottom lines of other negotiators. • Why do they set their targets and bottom lines at these points? What interests or needs do these positions satisfy? • Are your needs or interests and those of the other party mutually exclusive? • Will gains and losses have to be shared to reach agreement or can you settle with both receiving significant gains? .

Consider a range of positions between your target point and bottom line.

- Each subsequent position after the target point offers more concessions to the other negotiator(s), but is still satisfactory to you.
- Consider having the following positions for each issue in dispute: Opening position. Secondary position. Subsequent position. Fallback position--(yellow light that indicates you are close to bottom line; parties who want to mediate should stop here so that the intermediary has something to work with). Bottom line. 6.

Decide if any of your positions meets the interests or needs of the other negotiators. How should your position be modified to do so? 7. Decide when you will move from one position to another. 8. Order the issues to be negotiated into a logical (and beneficial) sequence. 9. Open with an easy issue. 10. Open with a position close to your target point. • Educate the

other negotiator(s) why you need your solution and why your expectations are high. • Educate them as to why they must raise or lower their expectations. 11. Allow other side to explain their opening position. 12.

If appropriate, move to other positions that offer other negotiator(s) more benefits. 13. Look for a settlement or bargaining range -- spectrum of possible settlement alternatives any one of which is preferable to impasse or no settlement. 14. Compromise on benefits and losses where appropriate. a = Party A's resistance point b = Party A's target c = Acceptable options for Party A x = Party B's target y = Party B's resistance point z = Acceptable options for Party B 15. Look for how positions can be modified to meet all negotiators' interests. 16. Formalize agreements in writing.

CHARACTERISTIC BEHAVIORS OF POSITIONAL BARGAINERS • Initial large demand--high or large opening position used to educate other parties about what is desired or to identify how far they will have to move to reach an acceptable settlement range. • Low level of disclosure--secretive and non-trusting behavior to hide what the settlement range and bottom line are. Goal is to increase benefits at expense of other. • Bluffing--strategy used to make negotiator grant concessions based on misinformation about the desires, strengths or costs of another. Threats--strategy used to increase costs to another if agreement is not reached. • Incremental concessions--small benefits awarded so as to gradually cause convergence between negotiators' positions. • Hard on people and problem--often other negotiator is degraded in the process of hard bargaining over substance. This is a common behavior that is not necessarily a quality of or desirable

behavior in positional bargaining. COSTS AND BENEFITS OF POSITIONAL

BARGAINING Costs • Often damages relationships; inherently polarizing (my way, your way) • Cuts off option exploration.

Often prevents tailor-made solutions • Promotes rigid adherence to positions • Obscures a focus on interests by premature commitment to specific solutions • Produces compromise when better solutions may be available Benefits • May prevent premature concessions • Is useful in dividing or compromising on the distribution of fixed-sum resources

• Does not require trust to work • Does not require full disclosure of privileged information Interest-Based Bargaining

Interest-based bargaining involves parties in a collaborative effort to jointly meet each other's needs and satisfy mutual interests. Rather than moving from positions to counter positions to a compromise settlement, negotiators pursuing an interest-based bargaining approach attempt to identify their interests or needs and those of other parties prior to developing specific solutions. After the interests are identified, the negotiators jointly search for a variety of settlement options that might satisfy all interests, rather than argue for any single position.

The parties select a solution from these jointly generated options. This approach to negotiation is frequently called integrated bargaining because of its emphasis on cooperation, meeting mutual needs, and the efforts by the parties to expand the bargaining options so that a wiser decision, with more benefits to all, can be achieved. WHEN IS INTEREST-BASED BARGAINING USED? • When the interests of the negotiators are interdependent.

- When it is not clear whether the issue being negotiated is fixed-sum (even if the outcome is fixed-sum, the process can be used). When future relationships are a high priority.
  - When negotiators want to establish cooperative problem-solving rather than competitive procedures to resolve their differences.
  - When negotiators want to tailor a solution to specific needs or interests.
  - When a compromise of principles is unacceptable.
- ATTITUDES OF INTEREST-BASED BARGAINERS
- Resource is seen as not limited.
  - All negotiators' interests must be addressed for an agreement to be reached.
  - Focus on interests not positions.
  - Parties look for objective or fair standards that all can agree to.
- Belief that there are probably multiple satisfactory solutions.
- Negotiators are cooperative problem-solvers rather than opponents.
  - People and issues are separate. Respect people, bargain hard on interests.
  - Search for win/win solutions.
- HOW TO DO INTEREST-BASED BARGAINING
- Interests are needs that a negotiator wants satisfied or met.
- There are three types of interests:
- Substantive interests--content needs (money, time, goods or resources, etc. )
  - Procedural interests--needs for specific types of behavior or the " way that something is done.
  - Relationship or psychological interests--needs that refer to how one feels, how one is treated or conditions for ongoing relationship.
1. Identify the substantive, procedural and relationship interest/needs that you expect to be satisfied as a result of negotiations. Be clear on:
    - Why the needs are important to you.
    - How important the needs are to you.
  2. Speculate on the substantive, procedural and relationship interests that might be important to the other negotiators.
    - Assess why the needs are

important to them. Assess how important the needs are to them. 3. Begin negotiations by educating each other about your respective interests.

- Be specific as to why interests are important.
- If other negotiators present positions, translate them into terms of interest. Do not allow other negotiators to commit to a particular solution or position.
- Make sure all interests are understood.

4. Frame the problem in a way that it is solvable by a win/win solution.

- Remove egocentricity by framing problem in a manner that all can accept.
- Include basic interests of all parties.

Make the framing congruent with the size of the problem to be addressed. 5. Identify general criteria that must be present in an acceptable settlement.

- Look for general agreements in principle.
- Identify acceptable objective criteria that will be used to reach more specific agreements.

6. Generate multiple options for settlement.

- Present multiple proposals.
- Make frequent proposals.
- Vary the content.
- Make package proposals that link solutions to satisfy interests.
- Make sure that more than two options are on the table at any given time.

Utilize integrative option generating techniques:

- Expand-the-pie--ways that more resources or options can be brought to bear on the problem.
- Alternating satisfaction--each negotiator gets 100 percent of what s/he wants, but at different times.
- Trade-offs--exchanges of concessions on issues of differing importance to the negotiators.
- Consider two or more agenda items simultaneously.
- Negotiators trade concessions on issues of higher or lower importance to each. Each negotiator gets his/her way on one issue.

Integrative solutions--look for solutions that involve maximum gains and few or no losses for both parties.

- Set your sights high on finding a win/win

solution. 8. Separate the option generation process from the evaluation process. 9. Work toward agreement. • Use the Agreement-in-Principle Process (general level of agreements moving toward more specific agreements). • Fractionate (break into small pieces) the problem and use a Building-Block Process (agreements on smaller issues that, when combined, form a general agreement). Reduce the threat level. Educate and be educated about interests of all parties. • Assure that all interests will be respected and viewed as legitimate. • Show an interest in their needs. • Do not exploit another negotiator's weakness. Demonstrate trust

- Put yourself in a "one down position" to other on issues where you risk a small, but symbolic loss.
- Start with a problem solving rather than competitive approach.
- Provide benefits above and beyond the call of duty.
- Listen and convey to other negotiators that they have been heard and understood.
- Listen and restate content to demonstrate understanding.
- Listen and restate feelings to demonstrate acceptance (not necessarily agreement) and understanding of intensity.

10. Identify areas of agreement, restate them, and write them down. COSTS AND BENEFITS OF INTEREST-BASED BARGAINING

Costs • Requires some trust

- Requires negotiators to disclose information and interests
- May uncover extremely divergent values or interests

Benefits • Produces solutions that meet specific interests • Builds relationships • Promotes trust • Models cooperative behavior that may be valuable in future. AN INTEGRATED APPROACH

Naturally, all negotiations involve some positional bargaining and some interest-based bargaining, but each session may be characterized by a



predominance of one approach or the other. Negotiators who take a positional bargaining approach will generally use interest-based bargaining only during the final stages of negotiations. When interest-based bargaining is used throughout negotiations it often produces wiser decisions in a shorter amount of time with less incidence of adversarial behavior. DYNAMICS OF NEGOTIATION Examining the approaches to negotiation only gives us a static view of what is normally a dynamic process of change.

Let us now look at the stages of negotiation most bargaining sessions follow.

Negotiators have developed many schemes to describe the sequential development of negotiations. Some of them are descriptive--detailing the progress made in each stage--while others are prescriptive--suggesting what a negotiator should do. We prefer a twelve-stage process that combines the two approaches. STAGES OF NEGOTIATION Stage 1: Evaluate and Select a Strategy to Guide Problem Solving • Assess various approaches or procedures--negotiation, facilitation, mediation, arbitration, court, etc. -- available for problem solving. • Select an approach. Stage 2: Make Contact with Other Party or Parties • Make initial contact(s) in person, by telephone, or by mail. • Explain your desire to negotiate and coordinate approaches. • Build rapport and expand relationship • Build personal or organization's credibility. • Promote commitment to the procedure. • Educate and obtain input from the parties about the process that is to be used. Stage 3: Collect and Analyze Background Information • Collect and analyze relevant data about the people, dynamics and substance involved in the problem. • Verify accuracy of data. • Minimize the impact of inaccurate or unavailable data. • Identify all parties'

substantive, procedural and psychological interests. Stage 4: Design a Detailed Plan for Negotiation • Identify strategies and tactics that will enable the parties to move toward agreement. • Identify tactics to respond to situations peculiar to the specific issues to be negotiated. Stage 5: Build Trust and Cooperation • Prepare psychologically to participate in negotiations on substantive issues. Develop a strategy to handle strong emotions. • Check perceptions and minimize effects of stereotypes. • Build recognition of the legitimacy of the parties and issues. • Build trust. • Clarify communications. Stage 6: Beginning the Negotiation Session • Introduce all parties. • Exchange statements which demonstrate willingness to listen, share ideas, show openness to reason and demonstrate desire to bargain in good faith. • Establish guidelines for behavior. • State mutual expectations for the negotiations. • Describe history of problem and explain why there is a need for change or agreement. • Identify interests and/or positions. Stage 7: Define Issues and Set an Agenda • Together identify broad topic areas of concern to people. • Identify specific issues to be discussed. • Frame issues in a non-judgmental neutral manner. • Obtain an agreement on issues to be discussed. • Determine the sequence to discuss issues. • Start with an issue in which there is high investment on the part of all participants, where there is not serious disagreement and where there is a strong likelihood of agreement. • Take turns describing how you see the situation.

Participants should be encouraged to tell their story in enough detail that all people understand the viewpoint presented. • Use active listening, open-

ended questions and focusing questions to gain additional information. Stage

8: Uncover Hidden Interests • Probe each issue either one at a time or together to identify interests, needs and concerns of the principal participants in the dispute. • Define and elaborate interests so that all participants understand the needs of others as well as their own. Stage 9: Generate Options for Settlement • Develop an awareness about the need for options from which to select or create the final settlement. • Review needs of parties which relate to the issue. • Generate criteria or objective standards that can guide settlement discussions. • Look for agreements in principle. • Consider breaking issue into smaller, more manageable issues and generating solutions for sub-issues. • Generate options either individually or through joint discussions. • Use one or more of the following procedures: • Expand the pie so that benefits are increased for all parties. • Alternate satisfaction so that each party has his/her interests satisfied but at different times. • Trade items that are valued differently by parties. • Look for integrative or win/win options. • Brainstorm. • Use trial and error generation of multiple solutions. • Try silent generation in which each individual develops privately a list of options and then presents his/her ideas to other negotiators. • Use a caucus to develop options. • Conduct position/counter position option generation. • Separate generation of possible solutions from evaluation.

Stage 10: Assess Options for Settlement • Review the interests of the parties. • Assess how interests can be met by available options.

• Assess the costs and benefits of selecting options. Stage 11: Final Bargaining • Final problem solving occurs when: • One of the

alternatives is selected. • Incremental concessions are made and parties move closer together. • Alternatives are combined or tailored into a superior solution. • Package settlements are developed. • Parties establish a procedural means to reach a substantive agreement. Stage 12: Achieving Formal Settlement Agreement may be a written memorandum of understanding or a legal contract. Detail how settlement is to be implemented--who, what, where, when, how--and write it into the agreement. • Identify "what ifs" and conduct problem solving to overcome blocks. • Establish an evaluation and monitoring procedure. • Formalize the settlement and create enforcement and commitment mechanisms: Legal contract • Performance bond • Judicial review • Administrative/executive approval Pre-Mediation Planning Before going into mediation, consider all of the possibilities.

What risks do you face? What do you have to gain? What are the major "deal points" which will make or break the negotiation for you? In the field of mediation, the process of evaluating your case or position may be called BATNA and WATNA analysis. BATNA stands for Best Alternative To Negotiated Agreement. In other words, if the mediation does not produce a settlement or other type of agreement, what is the best thing that could happen? Will the other side ultimately give in to your side? Will a new law cause things to come out in your favor? Will the other side lose interest in their position?

Will your costs/risks be negligible? Are you confident about winning in court? These are the kinds of question you may ask yourself while evaluating your

BATNA. WATNA stands for Worst Alternative to Negotiated Agreement. A couple of questions you may ask for this analysis are: Will the other side probably win in court? Who controls the status quo? If the case doesn't settle, am I the one who will ultimately lose? The process of BATNA/WATNA analysis ultimately assists a party in determining the scope of their mediation efforts and their reservation point.

Put another way, at what point will the party walk away from the table? When is it too risky not to settle, or too costly not to settle? Without a clear picture of these risk possibilities, it is extremely difficult to reasonably evaluate your case. A good mediator will also assist you in this analysis, but it's better to be prepared and knowledgeable before entering negotiations. You will appear more confident and credible in your claims. Opening Offers and Demands Great debate rages in the negotiation field over whether or not to throw out the first offer. Some experts advise never, ever to make a first offer.

Others cautiously advocate making a first offer if it serves your position. Whether you decide to make a first offer may depend upon your particular bargaining style. Be aware, however, that making a first offer sends a powerful signal to the other party. First, it has the potential to erode your credibility. If your offer or demand does not pass the "straight-face" test, your credibility may be on slippery slope. Be careful that your offer or demand isn't so absurd as to make your statements and assertions throughout the rest of the negotiation unbelievable.

Opening offers and demands are also powerful because they tell the other side roughly what your evaluation of the case is. It can therefore have the effect of shifting or anchoring the other party's expectations to the range you have requested or offered. The party may then respond to the offer/demand by adjusting or reevaluating the number they originally had in mind. Alternatively, if your offer/demand is outside of their anticipated range, it can provoke anger, incredulity or an equally unreasonable or absurd counter-offer. Bottom-Lines: If you have a bottom-line number, guard it until the right moment.

If you give it out too early, it can destroy the flexibility of the bargaining process. This occurs because parties often settle upon a number that wasn't anticipated. By revealing a hard number too early, it cements you into a position that is much more difficult to negotiate from. It also takes away the possibility of "gift-giving" which we will discuss later. The most fundamental rule of bottom-lines, however, is to tell the truth. Don't state a false bottom line, only to change it later to suit your negotiating needs. Doing so will ruin your credibility and decrease your leverage and bargaining power.

If you are asked for a bottom-line and are not ready to give it, you may politely say that you have a number in mind but would like to engage in further discussion to learn as much as possible about all aspects of the dispute before making a final decision. Strategies and Techniques Bargaining Styles Below is a chart describing different bargaining styles. Which category do you fit into? Soft [Cooperative] Hard [Competitive] Principled Participants

are friends. Participants are adversaries. Participants are problem-solvers.  
The goal is agreement. The goal is victory.

The goal is a wise outcome reached efficiently and amicably. Make concessions to cultivate the relationship. Demand concessions as a condition of the relationship. Separate the people from the problem. Be soft on the people and the problem. Be hard on the problem and the people. Be soft on the people; hard on the problem. Trust others. Distrust others. Proceed Independent of trust. Change your position easily. Dig in to your position. Focus on interest, not positions. Make offers. Make threats. Explore interests. Disclose your bottom line. Mislead as to your bottom line. Avoid having a bottom line.

Accept one-sided losses to reach agreement. Demand one-sided gains as the price of agreement. Invent options for mutual gain. Search for the single answer; the one they will accept. Search for the single answer; the one you will accept. Develop multiple options to choose from; decide later. Insist on agreement. Insist on your position. Insist on using objective criteria. Try to avoid a contest of will. Try to win a contest of will. Try to reach a result based on standards independent of will. Yield to pressure. Apply pressure. Reason and be open to reasons; yield to principle, not pressure.

SPECIAL NOTES ON HARD-BARGAINERS: When encountering hard-bargainers, negotiation can be tricky. Difficulties arise because granting concessions makes the other side feel bullied, but sticking to principles can create an impasse of negotiation. Here are a few tips for dealing with hard bargainers:

\* Don't attack the position, look behind it for interests and motivations \*

Don't defend your position or statements, instead, invite criticism and suggestions \* Don't react, pause or relax \* Don't argue back - listen carefully and calmly \* Reframe accusations as an assault on the problem itself \* Ask productive questions

Hard bargaining can arise in certain circumstances as well. Unreasonable initial demands, lack of meaningful information, greediness, positional bargaining, and threats can all cause a competitive bargaining environment to emerge. Leverage is an adversarial concept which allows a party to exert pressure on the other side by appealing to his/her fears, risks or needs. For example, if a party must have a certain dispute resolved by a certain date, withholding a resolution, walking away from the table, or delaying progress exerts pressure on that party to give in to the demands of the other side.

Using threats is also a form of leverage. Threat must be used carefully so as not to enrage the other side such that they refuse to participate in continuing discussion. Research indicates that the efficacy of threats depends on their credibility, immediacy, context, specificity and equity. Another form of leverage is " ego stroking. " For some people, being recognized or acknowledged in a positive way can cause incredible shifts in perspective. Such a party may be more willing to negotiate, may be more generous, or may overlook past transgressions. Be sure that any appreciation for the other side that you convey is sincere.

Sometimes, using positive-side leverage such as ego stroking can arouse an eagerness in the other party to reciprocate the sentiment or to seek to



please you by offering concessions. The Origin of Brilliant (and not so brilliant) Ideas A great way to apply positive leverage while seizing advantageous settlement opportunities is to give credit to the other side for discovering a solution or for presenting a good idea. Instead of saying, “ I want X dollars to replace my damaged roof” say, “ A little while ago, you presented a very clear picture of the problem and it helped me to understand the issue of the roof better.

I would like to hear more of your ideas about how we can approach that particular aspect of this negotiation. ” In other words, create for the other party a positive reputation, even if you believe it is undeserved in your particular scenario, that they can then attempt to live up to. Conversely, when a party makes a tactical mistake which doesn't help your position, but does threaten further progress, give them an easy opportunity to save face. For example, “ If I'm not mistaken, I think I heard you say you wanted \$3 billion for your broken fence.

I know there are a lot of numbers being exchanged here and I have become confused myself a couple of times with the amount of data. Would you like to review that figure and potentially make an adjustment at some point? ” Be sure to avoid encouraging or doing anything which could result in face-saving-behaviors. Face-saving behaviors are defensive attempts to re-establish face after threats to face or so-called “ face-loss”. People are often willing and even eager to retaliate and sacrifice rewards at great cost when they perceive the threat of humiliation.

By engaging in such behavior you are, at best, reducing the predictability of the outcome, and at worst, creating a hostile and perilous environment which could cost you and the other party a mutually agreeable settlement while augmenting the costs of dispute resolution. The Sometime-Appeal of High Concepts With some negotiators, it is possible to paint a bigger picture which extends beyond the limits of present issues. By appealing, for example, to a person's sense of idealism or a particular world-view, it is sometimes possible to break a deadlocked negotiation.

However, just as high concepts can broaden the mind of a stubborn participant, a carelessly made plea to a person's sense of justice can provoke indignation and encourage increasing inflexibility. For example, a negotiator might say, " If we are able to come to a settlement today regarding the teacher's union, the students can return to school much sooner and resume their studies, which is, of course, what we all want. " However, some negotiators may interpret such a statement as disingenuous, or mocking. So be careful! Reciprocal Bargaining

Some negotiation experts contend that a reciprocal bargaining strategy promotes responsibility, accountability, and reasonable dealings. Reciprocal Bargaining theory basically holds that if one party makes an unreasonable demand or offer, the other side must do the same, back to that party. The result is, theoretically, that each side will then see and appreciate the consequences of their own behavior throughout the negotiation.

Alternatively, if one party demonstrates generosity or uncommon honesty, the other side should reciprocate that behavior as well.

The relationship-building potential of this strategy has been touted by many mediation experts as an effective way to facilitate productive conversation. Alternatively, this strategy can be counter-productive if the parties do not respond appropriately to the consequences. This can occur where parties are emotionally involved in the proceedings, when personal relationships are the actual subject of dispute or when the negotiation involves more than one “hard-bargainer”. In these scenarios, a reciprocal strategy can create a downward spiral of bad behavior which ultimately causes negotiations to break down completely.

**GENEROUS RECIPROCAL BARGAINING THEORY:** An alternative strategy is to employ a downward-spiral breaking strategy known as generous reciprocal bargaining. This reciprocal strategy does not work in the systematic framework of the standard reciprocal bargaining. Instead, the parties reciprocate positive and negative behavior only the majority of the time. At irregular intervals, a party using this strategy will unexpectedly not reciprocate a negative behavior committed by the other party.

This behavior breaks the vicious cycle of negative behavior and can allow for positive behavior changes in both parties, leaving them open to more productive communication exchanges and opportunities for mutual agreement. Gift Giving Giving gifts during negotiation is a great way to generate goodwill, especially at the initiation of bargaining. Small concessions will leave a strong impression with the other side’s perception of you, and may influence their actions going forward. Small concessions are a low cost method of initiating momentum in negotiations.

By the way, one of the easiest and cheapest concessions you can grant to the other side is to listen to them, carefully, openly, and without judgment.

**Complaining** Some experts advise mediation participants to refrain from complaining. However, our position is that complaints can be useful to the extent that they can generate empathy and produce increased willingness to exhibit flexibility from the other side. If reasonable and genuine complaints are made carefully, are well-timed, are not excessively accusatory and do not occur with too much regularity, they can prove useful in the context of negotiation.

**Positions vs.**

**Interests** As we viewed in the bargaining styles chart, people negotiate in different ways, and with different results. A major problem in many mediations is that participants become committed to their positions, that is, the result they are aiming for. This tactic, (or tactical error) causes inflexibility and generates ill-will. Mediators attempt to separate the interests from the positions. That is, the mediator seeks to learn what the actual issues that drive the mediation are. By separating out the interests an objective approach to resolving the dispute becomes possible and solutions become more clearly visible.

For further illustration, please view this chart:

**PROBLEM:** The immediate source of conflict.

**INTERPRETATION:** How people interpret the other party's behavior.

**POSITION:** Demands, threats, fixed solutions, proposals, or points of view.

**INTEREST:** What really matters to this person. (Why is X a problem? )

**ISSUE:** The topic the parties need to discuss and decide.

**Barking dog.**

Neighbor is unfriendly, inconsiderate. Violates my privacy. Buy a muzzle. I'm

not well. I need my sleep. Want my home to be a quiet, private place. How to control the barking at night.

Unfair bill. This company wants to rip me off. They think I'm not smart enough to notice. I will not pay for work you didn't even do. Want to be treated fairly. Need to know how much something is going to cost so I can budget for it. What work was done, what recompense is fair. How rest of job will be billed. As a negotiator, it is important to focus on your interests and to resist trying to control the outcome of the negotiation. In this way, you can more reasonably evaluate your risks, options and creative solutions along the way to a mutually agreeable solution.

Additionally, it's a good idea to focus on the interests of the other side. By understanding, and by demonstrating understanding of the other side's interests, you will more easily command their attention and better understand the major deal points that will solve the dispute. Problems vs. People Similar to the above paragraph, mediators continually work to separate the people from the problems. This promotes a problem solving environment while reducing sniping, personal attacks and unreasonable and inflammatory statements. Be careful not to bargain over your positions. Instead, invent options for mutual gain, insist on using objective, evaluative criteria instead of accusatory statements. Although it's hard to take, if another party insults you personally, ignore the attack and look behind it to discover the feelings and motivations of the accuser. You may learn valuable information about the party's interests. To avoid inflaming the other party as well, avoid accusatory statements, personal attacks, petty insults and

counter-productive statements and questions such as: What do you want from me? Calm down! Be reasonable! What's your problem? and You always.... or You never..... Reframing

Reframing is perhaps the most important part of negotiation. Reframing is the process of restating something the other side has said in a way that is mutually beneficial. Reframing signals to the other party that you have listened to their story and that you understand and appreciate it. This, in itself, is a type of concession, and it doesn't cost you a thing! Reframing is an opportunity that presents itself at multiple stages of mediation. Instead of rejecting an offer, reframe it to convey your understanding as well as to present an opportunity to shift the focus or perspective on the topic.

You might try saying “ and” instead of “ but” to effectively reject an offer while appearing open to further discussion and at the same time reframing the issue to your advantage. Also, it is a good idea to ask sincere questions instead of making demands whenever possible. Instead of pushing the other side to meet your demands, use reframing to bring them to your point of view. Instead of escalating an argument, use reframing to educate the other side about your feelings and interests. Above all, reframing places the negotiation in the context of cooperation instead of competition.

Effective Listening This topic will be covered in-depth in the next unit. For now, let's look at the most basic concepts of effective listening. Listening is a great skill of negotiation. Listening allows you to learn about the other side's interests and to discover crucial dealpoints. Close listening also helps to generate goodwill with the other side. The value of “ being heard” is greatly

underestimated. Often, where emotions are involved, the opportunity to be heard and understood is very powerful. By listening carefully, you pave the way to excellent reframing opportunities, greater leverage, and an improved bargaining position. Be sure to listen carefully and actively (while respecting the groundrules of the mediation), empathize with the other side, ask questions which convey your understanding and empathy, and finally, restate the other side's story back to them while carefully respecting sensitive aspects of the account so that you do not inflame them. Deal Killers

In every negotiation, the possibility of failure exists. Certain conditions, behaviors, or acts threaten to stall or break down negotiations.

The more you know about these potential deal breakers, the better prepared you will be when you confront them, either on your own side, or across the table.

1. Reactive Devaluation: Parties tend to view offers by the other side skeptically. This leads to misevaluation of the other side's position. Hidden Emotion Example: "I would rather lose than settle with this guy..." This leads to misevaluation.
3. Failure to Understand BATNA/WATNA: Leads to misevaluation.
4. Biased Assimilation: Parties tend to hear and remember things they want to hear, and not hear things that are unpleasant.

This leads to misevaluation.

5. Loss Aversion: People generally prefer to avoid loss rather than to achieve gains. This leads to excessive attachment to positions.
6. Direct Contradiction: Avoid using language like, "You're wrong." Instead, offer a different perspective when it is your time to speak after validating the other party's opinion.
7. Equity Seeking: Parties may seek to return to the "Status Quo Ante" – that is, the state they were in prior

to when the particular conflict arose, or to recoup costs incurred in litigation or which have arisen from the conflict itself.

In so doing, that party may prolong the dispute unnecessarily in an attempt to reach that pre-conflict status. 8. Attribution Error: Parties tend to see the other side as evil, and their own side as innocent. This leads to misevaluation. 9. Endowment: People tend to overvalue their own property and interests, and undervalue the property and interests of others. 10. Miscalculation or ignorance of Deal Breakers: Think about reasons why the other side might refuse to settle. Plan out graceful ways to provide counter arguments or methods of avoiding those deal breakers.