

contract management

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to be frank ...

by **Frank Adoranti** CORPORATE LEGAL EDUCATION & DEVELOPMENT

The mindset of a good negotiator

Negotiation is one of the most fundamental skills in business — it is a skill which is also utilised extensively *outside* the business environment. In our personal lives it might involve negotiating a bank loan, the price of a major purchase, or even whose turn it might be to wash up after dinner.

Negotiation is not litigation, nor is it war; accordingly, the mindset of the negotiator is an important factor (and sometimes a determining one) in securing an acceptable and workable outcome.

Seeking total victory every time

To restate an earlier point, negotiation is not litigation, nor is it a war — it is not about obtaining a total victory on all points. Obtaining total victory over a party only generates animosity rather than the goodwill necessary to sustain a long term commercial relationship. No 'blood' needs to be spilled to achieve a successful and productive negotiation.

Winning good business

Anyone can shake hands on a deal — the true test is whether the parties actually end up obtaining the benefits they bargained for when the deal was struck.

That is why incentives to sales people should ideally not be based on just 'winning the business'. They should be geared towards winning *good* business. Often, such an assessment cannot be made for years after a deal has been secured.

Spirit of co-operation

Parties usually come to a negotiating table to strike a deal that is in each of their interests. The most appropriate frame of mind for the parties to adopt is one of co-operation rather than an adversarial approach with its attendant hostilities. If the parties can't get on for a few hours or days at the negotiation table, how on earth can they possibly co-exist peacefully in a long term commercial relationship?

Looking for ulterior motives — the hidden agenda

Some parties might enter into a commercial negotiation with no intention of reaching a concluded bargain. They may have an interest in spoiling the process to either help 'chew up' time or to divert the other party from a competitor in a situation where multiple parties may be negotiating contemporaneously.

Obviously, your intelligence gathering and qualifying processes are important to

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Acquiring negotiating skill

Like driving a car, it is impossible to learn negotiation from a book or classroom alone. The clock isn't ticking against you as it is in a real negotiation; there is nothing at stake; and your reputation is not on the line. The fears and desires that drive negotiations towards agreements are not present. As the Mexican proverb says, 'Talking about bulls is not the same as facing them in the ring.'

Negotiation is best learned by actually negotiating and applying the principles you have learned.

What takes longer to learn and can *only* be accumulated by experience is the good sense to assess a situation and make certain judgment calls with confidence. For example, experience teaches you to *differentiate opinions and feelings from objective facts*.

Experience also teaches you to *rank your main points prior to the negotiation*. Your efforts are then focused on those. Once you achieve them, you can concentrate on finding ways to help the other party achieve their objectives.

Inexperienced negotiators tend to give all of their points equal weight and regard each one as a battle to win. They do not know when to concede and move on from a non-material point.

Being a good motivator

Looking for and finding ways of motivating the other side can enhance your ability to persuade them. Remember the things that motivate us may not necessarily have the same effect upon others. One should never assume that what matters to us matters to anyone else.

This means you have to be genuinely attuned to the wants and needs of the other side and constantly looking for ways to address them. In this way, you will generate the appropriate level of interest for your point of view.

Maintaining credibility

Credibility is an important tool to

have at your disposal in any negotiation. It is also highly portable, and the other side's knowledge of it (or, more particularly, the absence of it) will tend to precede your arrival at any negotiation.

It always pays to remember that this negotiation is not your first and will also not be your last. You need to ensure that you emerge from each negotiation with your credibility intact. It is also important to protect the credibility of your organisation.

To help maintain your credibility, you need to be mindful of the following.

Making consistently rash claims or demands

Notice the use of the word 'consistently' in the above heading. There will be situations when making a rash or exaggerated claim, statement or demand may be appropriate or necessary.

To retain the maximum effectiveness of such tactics and your all-important credibility, it should be done frugally. *Any* tactic, when overused, loses its effect.

Be acutely aware of making absolute statements in a negotiation

Be aware, for example, of making an offer and accompanying it with a statement such as 'This is my final offer.'

After having made such a statement, you are not able to then move from your position, *under any circumstances*. To do so, for any reason, poses a real risk to your credibility. You want to be known as a person whose word means something.

Not following through with a promise or threat

If you have threatened to walk away from the negotiation over a deal-breaker, you must be prepared to do so.

You should avoid a situation requiring you to place your credibility on the line.

To emphasise an earlier point, threats and promises should be made

sparingly, so when they *are* made, your reputation will cause them to be regarded seriously by the recipient.

Do not bluff

If you do bluff and are caught out, the other side will assume you are bluffing *whenever* you take a hard line. Besides killing your credibility, this will also have the effect of prolonging the negotiation. This is because the other side will then probe each remaining issue to its depths to be satisfied that you are not also bluffing on those issues.

If you do threaten to leave the negotiation, be sure you are ready to do so, especially when you may be invited by your opponents to carry out your threat. If you don't leave, you will have lost your credibility and will be in real trouble.

Conclusion

The overriding message is that a good negotiator does not rigidly adopt a fixed template approach to any negotiation.

An accomplished negotiator will have certainly done the usual due diligence and intelligence gathering *prior* to the negotiation.

However the hallmark of the experienced negotiator is being attuned to and recognising the fluidity of the situation and the personalities involved.

Being able to imperceptibly adapt your negotiating perspective to the fluidity of the situation

One should never assume that what matters to us matters to anyone else. This means you have to be genuinely attuned to the wants and needs of the other side and constantly looking for ways to address them. In this way, you will generate the appropriate level of interest for your point of view.

on a proactive basis (rather than a reactive one) is what sets apart the merely competent negotiator from the outstanding one. ●

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