

Editorial

Negotiating: The Art of the Possible

Negotiating is something the business lawyer is often called upon to do. But, to be successful as a negotiator, the business lawyer requires certain skills that may quite often be conspicuous by their absence. Some people are born or natural negotiators, but many others need to learn the art of negotiating – perhaps even from scratch! Unfortunately, for many of us our training as lawyers did not, as it does nowadays, include a course on negotiating. So many of us, therefore, have either to take one or try to get by through “on the job learning/training”. This, I am sure you will agree, is neither satisfactory to the companies and clients who employ us, nor to ourselves, from a professional point of view. Of course, once you have learned the principles of negotiating, like anything else, you will need to gain experience from putting them into practice in actual cases.

Practical Manuals and Courses

Many books and practical manuals have been written on negotiating and these are also a source of the skills that need to be learned and developed. But, in my experience, they are generally a poor substitute for actual attendance and participation in practical courses, both introductory and advanced, such as those organised, in many parts of the world, by “The Negotiating Institute” of New York. These courses explain the objectives of negotiating and analyse the personal, psychological and other practical attributes and skills required to achieve them in a variety of situations. These courses, however, do not come cheaply, but the financial investment will, I submit, be well worth it and soon amortized.

Negotiation Guidelines

Negotiation is an art and there are a number of basic guidelines to be followed. Here are some of them.

Like any other form of advocacy – persuading another person to accept your point of view – a negotiation needs to be carefully planned. Before you start, you need to know clearly what your objectives are and how you are going to achieve them. Make sure, however, your objectives are realistic and reasonably achievable.

An important part of the planning process is to gather as much intelligence about the other side in the negotiation as possible. You will need to know, amongst other things, the kind of people you are dealing with; their strengths and weaknesses; and their aims and objectives.

Again, as part of the planning process, the negotiation should be structured into phases. The first phase should identify any points of agreement and get those out of the way; the next, points of disagreement and the reasons for them. The following phase should be to evaluate, from your own point of view and also that of the other side, the importance of these differences and the possibilities for any compromises. Try to identify the matters that are negotiable and the ones that are not negotiable. Watch out for and try to

interpret any “body language” – that is, non-verbal communications. Negotiation also needs time and patience and should not be rushed. Every negotiation should be conducted in a courteous and conciliatory manner. When temperatures and blood pressures begin to rise, it is time to take a break!

Role Play Timing and Cultural Difference

The use of role play – the “hard” person and the “soft” one – should be handled very carefully. You should decide, in advance, on the particular roles to be played by each of the members of your negotiating team. And, having done so, you should stick to them. In particular, you should appoint one of the members of the team to lead the negotiations and someone else to take notes and keep a record of everything that is said and “agreed” during them.

Likewise, the imposition of any “deadlines”, which are designed to move the negotiation along and reach a conclusion more speedily, should also be carefully managed. As in litigation, so also in a good negotiation, never issue a threat that you are not able to or have no intention whatever of carrying out! Timing is also very important. Choose your moment carefully to press home a particular point. Always know when and how to retreat.

In international negotiations, be aware of and allow for cultural differences and the need, where necessary, for the other side to “save face”. This is especially important in negotiations with the Chinese and the Japanese. Always try to make it easy for the other side to say “yes”.

The Golden Rule

Like politics, negotiation is the art of the possible and the above are just a few of the basic principles to be followed when planning and taking part in one. In addition, however, there is one vital or golden rule that should always apply to any negotiation and it is this: do not insist on getting the last penny. Always remember that, in a successful negotiation, everybody wins something!

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