

CHAPTER 1

The Nature of Negotiation

What It Is and Why It Matters



Negotiation is an important aspect of our everyday lives, especially because it offers an effective means for resolving conflicts. Whether we like it or not, conflicts—differences that interfere with our efforts to satisfy our interests—are ubiquitous. Sometimes they motivate us to find great solutions that work for everyone involved. Sometimes they frustrate us and make us so angry that we devote all of our energies to “beating” the other side or they might scare us or make us so angry that we avoid them, hoping the problem will go away on its own so that we do not have to deal with it. There are many ways to deal with conflict, and people have tried them all—war, fighting, lawsuits, arguing, blaming, giving up and letting the other side “win” and probably many others. This book presents a comprehensive **discussion** of **negotiation**, a technique that people use to resolve their differences, whether these differences are as minor as what to have for dinner or as major as where to draw the line between two countries’ borders.

INTENDED BENEFITS OF THIS CHAPTER

When you finish reading this chapter, you should be able to

1. Explain the nature of negotiation, and why it is an increasingly important skill for people to possess.

2. Recognize negotiation opportunities and determine whether you should try to capitalize on these opportunities.
3. Describe the process that most negotiations follow.

THE ESSENCE OF NEGOTIATION

People negotiate every day, often without realizing it. Every time you ask for something you are actually negotiating. The following scenario illustrates a few of the many types of negotiation situations that you may find yourself experiencing on any given day.

NEGOTIATION IN ACTION 1.1

On his way to work one morning, Jay was in a car accident. He was hit by a driver making what he believed was an illegal left turn. The other driver initially refused to give Jay her insurance information. He persisted and she finally relented. When the police officer arrived, nearly an hour later, she investigated and decided that neither driver was at fault so she didn't cite either one. Jay tried to explain that the turn was illegal, but the officer wouldn't listen. Jay's car needed repairs so he went to rent a car. The man behind the counter offered him a car that he had always wanted to drive, but the price was very high. Jay explained that he had been in an accident and would be renting the car for an extended period. After some additional conversation, the agent agreed to drop the price if he kept the car for at least two weeks.

When he finally got to work, more than 2 hours late, Jay's boss jumped all over him for missing an important meeting. Jay tried to explain what happened, and his boss relaxed a little, but he still seemed annoyed. When he finished with his boss, Jay called the director of the MBA program in which he was enrolled. His classes meet every other Friday and Saturday for 4 hours each day, and he is taking two classes. He had heard rumors that the director was instituting an attendance policy that would subject students to removal from the program if they missed more than three classes. He was going to miss all four of his classes the following weekend to attend a meeting at which he would be making a presentation to senior management. He hoped the director would understand that the meeting was a fantastic opportunity for his career and professional development: Jay wanted to ensure that he would not be disciplined, but he knew that one of his classmates had been given a disciplinary warning for missing class for similar reasons.

At home that night, Jay's girlfriend, wanted to go out for a nice dinner to celebrate her promotion. He was happy for his girlfriend, he wanted to support her, and he wanted to help her celebrate her achievements, but he really didn't want to go out. Jay explained to her that he needed to finish a project for work, and then study.

The insurance company called the next morning to arrange an appointment to assess the damage to Jay's car. When the adjuster claimed that he couldn't meet for several days. Jay explained that since he didn't have rental car coverage, he would like to move faster. When the adjuster finally assessed the damage, he told Jay that it would probably take two weeks after the insurance company

authorized payment for the body shop to get the parts and repair the car. Two weeks later the company had still not authorized payment. Jay reiterated his concerns about the costs he was incurring for his rental car and asked the company to expedite the process. The adjuster told him it would take another three weeks to complete the repairs. Jay then asked the insurance company to pay his rental car costs since they took so long to authorize payment.

Jay negotiated with the driver of the other car and he, tried, unsuccessfully, to negotiate with the police officer. He then negotiated with the rental car agent, his boss, the MBA director and his girlfriend. He negotiated with the insurance agent several times. Jay's stake in the outcomes of some of these negotiations was greater than in others. So was his success.

We negotiate because we think we can accomplish more with others than we can on our own. We begin negotiating when we are very young (think of the young child in the candy aisle of the grocery store with mom or dad). If we negotiate often and start when we are young, and if practice makes perfect, do we really need to study and learn how it is done, or how it should be done? The answer is yes. While practice can help, it also reinforces bad habits and the empirical evidence demonstrates that negotiators often make mistakes that prevent them from achieving optimal outcomes. Relative to expert negotiators, for example, novices are more likely to think that negotiators' interests are incompatible; negotiation is characterized by sequential issue settlement and it is a competitive activity. Novices are also more likely to believe that impasses and third parties lead to successful negotiations (O'Connor & Adams, 1999). Whether you are an experienced and accomplished negotiator or more of a novice, this book will enhance your understanding of the process and help you refine your skills and abilities, or develop new ones. This will help you avoid the mistakes that often plague negotiators so that you can achieve better outcomes.

WHAT IS NEGOTIATION?

Negotiation is a *social process* by which *interdependent* people with conflicting interests determine how they are going to allocate resources or work together in the future (Brett, 2007). It is a *social process* because people must interact with others to achieve their desired outcomes. This interaction may occur face-to-face, telephonically, by mail or, increasingly, electronically via e-mail, instant messaging, or video conferencing. **Reading 1.1** at the end of this chapter demonstrates how technology is changing the face of negotiation. We interact with others because we are *interdependent*—we have something they need or they have something we need. Knowledge, information, skills, abilities, access to important people and, of course, money, are but a few examples. Interdependence often takes a subtler form as well. How we initiate an interaction depends upon the nature of our prior interactions with the other party, and the manner in which we convey information to him or her influences how he or she responds. Cooperation in prior

interactions, for instance, begets cooperation in future interactions and, conversely, competition begets competition.

WHEN DO PEOPLE NEGOTIATE?

Traditionally, negotiation was viewed as a combative process—a battle between adversaries. Though some still hold these beliefs, and this approach still exists, attitudes and even the evidence are changing. Negotiation is now viewed widely as a collaborative process that is used to find the best solutions for everyone involved (Babcock & Laschever, 2007). We negotiate when we believe we can achieve more with others than without them. This is true whether we are making deals, settling disputes, making team decisions, solving problems, or trying to capitalize on new opportunities. If we interact with someone because we want him or her to take something from us, or because we want something from him or her, a negotiation opportunity exists. If both sides are willing and able to adjust their differences, a very strong negotiation opportunity exists. If one or both sides is unwilling or unable to adjust their differences, a very poor negotiation opportunity exists. Negotiation in Action 1.2 illustrates a potential negotiation opportunity that was thwarted because one of the parties, the college administrator, was unwilling to adjust his differences with the students who made the request.

NEGOTIATION IN ACTION 1.2

A college administrator announced on a Friday morning that he wanted to meet with a group of graduate students that day at lunch. These students were enrolled in two classes that met for 4 hours each on Fridays and again on Saturdays. The day the administrator wanted to meet with them was the last Friday of these classes. The students had team projects and presentations due the next day and they had planned to meet with their teammates at lunch to coordinate and finalize their projects. The students e-mailed the administrator, explained their dilemma and asked if he would meet with them on Saturday instead. The administrator typed his rejection of their proposal and asked one of his staff members to read it verbatim.

WHY HAS NEGOTIATION BECOME A MORE IMPORTANT SKILL?

The ability to negotiate effectively is becoming increasingly important, especially for those who work or volunteer in business, government, healthcare, or any other type of organization. There are many reasons for this development and they are illustrated in the following examples.

Technology

- The rise of e-commerce, especially online auctions and trading, has created a new realm for buying, selling, and otherwise doing business.

- Technology brings customers much closer to organizations, thus increasing the incidence of negotiating to secure and maintain productive relationships with them.

The Workplace

- Organizations have become less bureaucratic and flatter with fewer layers of managers and employees in their hierarchies. Job responsibilities and reporting lines have become less formalized and command-and-control management styles have been displaced. These changes, coupled with the wide array of other organizational structures that have been adopted, have left employees with fewer and fewer definitive rules to follow about how work should be done. They are now expected to negotiate many aspects of their work.
- People change jobs, and even careers, more often than ever before. This increases the number of employment packages they must negotiate. The growth of customized employment contracts designed to meet employees' unique needs for flexibility also make more elements of an employee's work life negotiable (Babcock & Laschever, 2007).
- Domestically and internationally, organizations are increasingly using team-based work processes, and many of these teams are devoid of formal leaders. Decisions, therefore, must be negotiated by team members.
- The workforces in the U.S. and other countries are becoming more diverse, and demographic trends suggest this will continue. Working with diverse coworkers often requires employees to negotiate their differences. Done well, this produces beneficial outcomes. It appears, however, that this is frequently done poorly or not done at all.
- The decline of union membership in the U.S. (Budd, 2010) means that unions are now negotiating employment packages for far fewer employees. This means that individual employees must now negotiate the terms of their employment for themselves.
- Managers spend a substantial amount of their time at work dealing with employee conflict or helping other managers deal with conflict (Brotheridge & Long, 2007). The ability to negotiate well, and to intervene effectively when necessary, should make them better conflict managers and enhance their work performance.
- Like conflict, organizational change is ubiquitous and must be managed to be successful. Addressing the concerns of those individuals who are affected by the change is one very important component of this process, notably overcoming resistance. Negotiating the change and reaching a mutually acceptable outcome with these people is often far more effective than simply imposing the change on them.
- When businesses expand their operations overseas, they sometimes do so by forming joint ventures or strategic alliances with a company in the host country. This obviously requires the dealmakers to negotiate the terms of the joint venture or alliance and how they will be implemented.
- Generally speaking, we negotiate with others if we need their cooperation and we cannot command them to do something. In organizations, this might include peers or superiors, or coworkers in other departments. Managers might even negotiate with their subordinates because they have their own interests, understandings, sources of support, and areas of discretion (Lax & Sebenius, 1986).

HOW PEOPLE NEGOTIATE: THE DUAL CONCERNS MODEL

Early conflict researchers argued that how people manage conflict depends upon the relative importance they attach to their own outcomes and the other party's outcomes (Thomas, 1976; Blake & Mouton, 1964). This **dual concerns model** posits five different approaches for handling conflict, as depicted in Figure 1.1. People who attach substantially more importance to their own outcomes than they attach to the other party's outcomes adopt a *competitive* or win-lose strategy. *Accommodation* is a lose-win strategy. It is used by those who place greater importance on the other party's outcomes than their own. Those who have little concern for either party's outcomes *avoid* conflict. This is a lose-lose strategy. *Compromising* is what people do if they are only moderately concerned about both parties' outcomes. *Collaboration* is the strategy of choice for people who seek a win-win outcome—they attach great importance to both parties' outcomes.

What does this have to do with how people negotiate? Savage, Blair, and Sorenson (1989) modified the *dual concerns model* by arguing that how people negotiate depends upon the relative importance they place on the *substantive terms* of the outcome at stake, and their relationship with the other party. If concern for the relationship is equivalent to “concern for the other party's outcome, this framework simply extends the *dual concerns model* to negotiation. Using this framework, there are two dominant strategies.

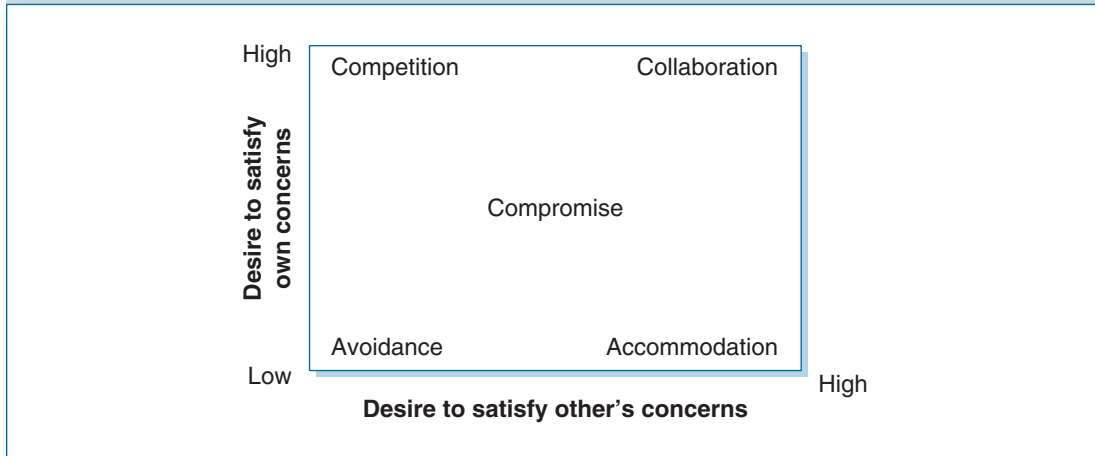
One is a *competitive* approach reflecting greater concern for the substantive terms of the outcome for him- or herself than for the relationship. This strategy is typically called distributive, positional, zero-sum, or win-lose negotiating. These are different names for the same phenomenon, all of which assume that the negotiation is a zero-sum exercise—if one party gains something the other must lose. This strategy is about *claiming value* and is most appropriately used when the parties' goals are in fundamental conflict, resources are fixed or limited, they attach greater importance to the substantive terms of the outcome than the relationship, and trust and cooperation are lacking.

The other dominant strategy is commonly called integrative, principled, interest-based, mutual gains, or win-win negotiating. Again, these are different labels for the same phenomenon. This is a *collaborative* approach whereby substantial importance is attached to both the relationship and the substantive terms of the outcome for both parties. This strategy is about *creating value* so that both negotiators can benefit from it. It is most appropriately used when the parties' goals are not in fundamental conflict, resources are not fixed or limited, sufficient trust or cooperation exists, and the parties want to find mutually beneficial outcomes.



What about the other three approaches? Some have argued that *compromising* is lazy problem solving involving a half-hearted attempt at satisfying both parties' interests (Pruitt & Olozak, 1995). For the purpose of this book, it will be treated not as a strategy but as an outcome. Suggestions for when and how to compromise or concede will be proffered when the process of claiming value is examined. *Accommodation* is a form of soft distributive bargaining where one is willing to accept less so that the other party can gain more, ostensibly to maintain or improve the relationship. *Avoidance* usually connotes inaction whereas negotiation connotes action. Thus, it is not considered a bargaining strategy. It is possible, however, to avoid conflict aggressively. Some people use *intimidation* to prevent the other party from engaging in the process. This is consistent with the notion of aggressive distributive bargaining.

Which of these approaches is best? The simple answer is that it depends. One of the central tenets of this book is that the aforementioned situational characteristics—goals, resources, relationship,

Figure 1.1 The Dual Concerns Framework

Video 1.2
Mixed-motive
negotiations

trust—determine which strategy is most appropriate. Moreover, there is rarely such a thing as a purely distributive or integrative negotiation. Although the two dominant strategies will be discussed independently in Chapters 3 and 4, respectively, real negotiations are generally a mixture of these two approaches because they are *mixed-motive* events. Negotiators cooperate to ensure an agreement is reached. They compete to ensure that their needs are satisfied. [Reading 1.2](#) at the

end of this chapter provides a more detailed discussion of the dilemmas negotiators face because of these mixed motives.

THE PROS AND CONS OF NEGOTIATING

Negotiation holds great promise for realizing net benefits when you are trying to close deals, settle disputes, make team decisions, solve problems, or capitalize on new opportunities. It provides you with a useful tool for satisfying your needs if you and the other party are interdependent, you believe you can persuade him or her to give you more than he or she had planned or more than you can get on your own, and both of you are willing to adjust your differences to reach an agreement (Lewicki, 1992; Rubin & Brown, 1975). Despite its promise, it is not always appropriate to negotiate.

- If you may lose everything by negotiating, you probably should find another way to address the situation.
- If you do not have time, are inadequately prepared, or have no stake in the outcome, it is wiser to find another way to address the situation.
- If waiting will improve your ability to satisfy your needs, you should wait.
- Some also argue that it is inappropriate to negotiate if the other party's demands are unethical or illegal (Levinson, Smith, & Wilson, 1999).

WHAT DOES A NEGOTIATION LOOK LIKE?

It is hard to describe a typical negotiation because no two are identical. Yet there are common themes that emerge, and common flows or patterns that they often follow (Greenhalgh, 2001; Morley & Stephenson, 1977). These flows or patterns are not truly linear. Many negotiations move forward, get stuck, regress, or even move sideways. Nevertheless, they will be described as if they are linear for the sake of clarity. As depicted in Figure 1.2, the *initial stage* of a negotiation typically includes, or should include, pre-negotiation preparation and, when you meet with the other party, rapport building and more information gathering to test your assumptions. As will be discussed in Chapter 2, building rapport enhances preparation because it engenders more information sharing and trust, and reduces the issuance of threats (Nadler, 2004). In addition, your preparation should include an analysis of the other party. Since full disclosure is rare or nonexistent in negotiations, these analyses contain assumptions, estimates or educated guesses about the other party. Testing your assumptions, therefore, is required to verify your hunches about *what* he or she intends to negotiate (the substance), *how* he or she intends to do so (the process), and the relationship.

Figure 1.2 How Negotiations Typically Flow				
Initial Stage	→	Middle Stage	→	Final Stage
Pre-negotiation preparation		Formulate arguments & counterarguments		Implement the agreement
Build rapport		Formulate offers & counteroffers		
Test assumptions		Close deals		

Formulating your arguments and counterarguments to persuade the other side to agree with you, exchanging offers and counteroffers, and closing the deal are the focus of the second or *middle stage*. In essence, this is about using the information you gathered during the initial stage to achieve your goals and satisfy your needs.

Agreements are implemented in the third or *final stage*. Your focus should be on ensuring that the terms of the agreement are executed as intended and that the parties comply with them. Including a mediation or arbitration clause to settle disputes pertaining to the agreement might be warranted to ensure that the parties comply with the terms of their agreement.

THE SHADOW NEGOTIATION

The foregoing describes what most people think and talk about when discussing a negotiation—the transaction. Underlying all such transactions, however, is the **shadow negotiation** (Kolb & Williams, 2003). This entails the subtle games people play, often before they even get to the

table. It is not about the *what* of the negotiation but the *how*. The shadow negotiation involves jockeying for position. This includes using **strategic moves** to ensure that the other party comes to the table and gives your interests and proposals a fair hearing, using **strategic turns** to reframe the negotiation in your favor if it turns in an unproductive direction, and using **appreciative moves** to build a stronger connection with the other party to develop a shared and complete understanding of the situation and a more productive negotiation (Kolb & Williams, 2003). Although it is present in all negotiations and often precedes negotiating the substantive terms, the shadow negotiation and the various moves and turns it encompasses will be discussed in detail in Chapter 13. It is particularly salient when managing various special challenges that make negotiations quite difficult.

CONCLUSION AND IMPLICATIONS FOR PRACTICE

Negotiation is not always an appropriate way to manage interactions. But it usually is if you want the other person to take something from you or you want to receive something from him or her. Moreover, it holds greater potential for finding mutually beneficial outcomes and preserving or improving relationships than many other techniques that are commonly used. There is no single best way to always execute this process—which way is best depends upon the characteristics of the situation. Nor is it possible to describe what all negotiations look like. They follow common paths, but no two are identical. The remaining chapters discuss effective ways to negotiate in different situations. For now, consider the following suggestions to guide your negotiations.

1. Think of a negotiation as a life skill, not just a business skill. As indicated in the opening scenario, we negotiate many times a day—at work, home, and elsewhere. Think about your daily interactions. How many of them did you engage in without really considering whether you were negotiating? If the other person wanted to receive ideas or things from you, or if you wanted to collect ideas or things from him or her, you were in a negotiation situation.
2. Realize that like most skills, the ability to negotiate can be learned. Many people seem to think that some people are born negotiators. Some people do have stronger aptitudes for negotiating than others, just as some people have stronger aptitudes for the sciences or math or technology or music than others. Whether you possess these apparent gifts for negotiating or not, even those people with apparent Change to: gifts for negotiating can learn to be more effective at it. This is critical, especially if you work or interact with others, because more and more situations are negotiable. Traditionally, for example, it has been argued that the core tasks of a manager include planning, directing, leading, and controlling. You might want to add negotiating to this list because it has become a crucial competency for managers.
3. Although all negotiations are “mixed motives” events that require some cooperation to reach an agreement and some competition to claim sufficient value for yourself, you must determine whether you want to negotiate more competitively or more collaboratively. When making this determination, consider the relative importance of your relationship with the other party and the substantive terms of the outcome for you.

4. However you choose to negotiate, remember that preparation is crucial because it builds the foundation for your negotiation. This is the first stage of successful negotiations. In the middle stage, negotiators generally exchange offers and counteroffers, and close the deal. The final stage of most negotiations is critical but often ignored—the implementation of your agreement. To avoid having your agreement fall apart after you have negotiated it, consider including provisions for ensuring that it is implemented, managed, and enforced properly.



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KEY TERMS

Accommodation approach to negotiation

Appreciative moves

Avoidance approach to negotiation

Collaborative approach to negotiation (a.k.a. integrative, principled, interest-based, mutual gains, and win-win approach)

Competitive approach to negotiation

Compromising approach to negotiation

Distributive negotiating (a.k.a. positional, zero-sum, and win-lose negotiating)

Dual concerns model

Final stage of a negotiation

Initial stage of a negotiation

Integrative approach to negotiation (a.k.a. collaborative, principled, interest-based, mutual gains, or win-win approach)

Interest-based approach to negotiation (a.k.a. collaborative, integrative, principled, mutual gains, or win-win approach)

Lose-win approach to negotiation necessary

Middle stage of a negotiation

Mixed-motive negotiation

Mutual gains approach to negotiation (a.k.a. collaborative, integrative, principled, interest-based, and win-win approach)

Negotiation

Positional negotiation (a.k.a. distributive, zero-sum, and win-lose negotiation)

Principled approach to negotiation (a.k.a. collaborative, integrative, interest-based, mutual gains, and win-win approach)

Shadow negotiation

Strategic moves

Strategic turns

Win-lose (a.k.a. distributive, positional, and zero-sum negotiating)

Win-win approach to negotiation (a.k.a. collaborative, integrative, principled, interest-based, mutual gains approach)

Zero-sum negotiation (a.k.a. distributive, positional, and win-lose negotiation)

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READINGS

Reading 1.1

ONLINE DISPUTE RESOLUTION: DO YOU KNOW WHERE YOUR CHILDREN ARE?

David A. Larson

Will we ever see the day when the Internet serves as the primary venue for problem solving and

dispute resolution? Social science research suggests that our online communication skills will improve as we learn relational behaviors based upon nonverbal cues available online. Dispute resolution and problem solving will move online, however, whether or not you and I master those skills. Our children already have developed

Source: Larson, D. A. (2003). Online dispute resolution: Do you know where your children are?, *Negotiation Journal*, 19(3), 199-205.

effective online relational behaviors and can establish trust and intimacy online.

Although most of us acknowledge that the Internet is becoming an increasingly important supplemental tool for dispute resolution and problem solving, we cannot imagine ourselves resolving disputes primarily online. Because online communication's distinct limitations include an absence of verbal cues and body language, the online environment does not appear conducive to dispute resolution. We may not have the confidence to make, or help others to make, the honest and private disclosures online that often are essential to effective problem solving¹. Yet in spite of these reservations, dispute resolution will move online.

Why? Because our kids already have learned to develop close relationships and solve problems using the Internet. Regardless of whether you or I are prepared to take problem solving online, the next generation already has made that move. The only real question is whether the rest of us — generally “over 35” types — will join them.

Consider three possibilities:

(1) The dynamic potential that online dispute resolution offers is almost unimaginable, and some day it will become the preeminent ADR process;

(2) Online exchanges capture neither the essence nor nuance of human communication and, consequently, initial excitement will evaporate quickly and online dispute resolution soon will be relegated to the same lonely space now occupied by monochromatic monitors; or,

(3) Online dispute resolution increasingly will become a valuable, and perhaps ultimately invaluable, complement to ADR processes; but it always will be, shall we say, a side dish and never the main course.

Confused? Then you are not alone. Although online dispute resolution is attracting significant attention from scholars,² governments, professional associations,³ and service providers, the idea of resolving disputes online still is in its infancy. So it is difficult, if not impossible, to predict how valuable online dispute resolution will become.

Some of us are hoping quietly, or declaring dismissively, that the second possible outcome is most likely. Many of us will identify the third outcome as the most plausible. But there is a genuine possibility that the first prediction is the one that will materialize and it may happen more quickly than we ever could have imagined.

Truly fascinating data being collected and analyzed by communication experts suggests that, rather than finding themselves unable to create trust and intimacy online, experienced individuals exchange more intimate questions and disclosures in computer-mediated [assisted] communication than in face-to-face contexts. A growing body of research asserts that personal relationships developed in computer-mediated communication are comparable to those developed face-to-face. Assuming the research is reliable, then as we become more experienced and skilled online communicators, we will create an environment online that encourages disclosure and facilitates effective problem solving. Some will find it not only a workable environment, but also the optimal environment.

The Comfort Factor

Although initial research concerning the creation of personal relationships online suggested that individuals were unable to form impressions of each other in the absence of nonverbal cues, groundbreaking research indicates that online communicators have adapted.⁴ Social Informational Processing theory asserts that even without nonverbal cues, parties who

communicate online can develop effective relational behaviors that rely upon the cues that do exist online, including typographic or chronemic cues as well as content and linguistic strategies.⁵ Additional research suggests that when nonverbal cues are lacking, parties using computer-mediated communication focus and narrow their conversations and thus engage in more intimate exchanges. Computer-mediated communication becomes in effect “hyperpersonal.” Parties engaged in computer-mediated communication develop more intense, although not broader, impressions.⁶

So will we be able to form the types of impressions online that may be required to participate in an intimate conversation? Studies have shown that by using available uncertainty reduction strategies such as direct questions and self-disclosure (which prompt reciprocal disclosures) more intensely than one would face-to-face, computer-mediated communicators can engage in very personal exchanges.⁷ In fact, hyperpersonal relationships thus can be created. A growing body of literature maintains that effective online communicators experience more intimate conversations and offer more personal disclosures than they would in face-to-face situations.

Because computer-mediated communication is characterized by visual anonymity and text-only communications, some researchers have declared that computer-mediated communication inevitably will be task-oriented and lack emotional content.” Furthermore, others have argued that computer-mediated communication will encourage anti-normative, aggressive (i.e., “flaming”) behavior.⁹ More recent studies, however, reveal that visual anonymity and increased private awareness, coupled with a reduced public awareness, result in greater self-disclosure in computer-mediated communication as compared to face-to-face.¹⁰

Assuming this is true, as we increasingly use computer-mediated communication by e-mailing

and posting messages, we will create a comfort zone that will allow us to reveal ourselves online in ways that we are unable to do offline. Once that comfort level is established, online dispute resolution becomes a very plausible option.¹¹

You don’t buy it? Perhaps you do not believe the research. You may believe that your online communications never can achieve the level of intimacy that can be established face-to-face. If you are right, then in the short term this may slow the evolution of online dispute resolution. But in the long run, it will not make any difference. The fact is that your children already have established that critical level of intimacy online.

The Next Generation Lives Online

The research investigating how teens and pre-teens communicate online is eye opening, even stunning. Although many of us have not thought critically about how our children communicate online, it now is something that we need to consider. In fact, one could offer a fourth prediction to supplement the three predictions articulated in this article’s third paragraph:

(4) The possibilities that online dispute resolution presents are incomprehensible to the current population of ADR professionals, who have neither the technical expertise required nor, frankly, the energy and motivation necessary to employ this powerful tool. Experienced neutrals and facilitators are quickly recognized as ineffective in the online environment and seldom are invited to facilitate conversations or participate in problem solving. Their places are taken by members of a younger generation who understand computer-mediated communication.

Yikes.

The research exploring how teenagers live online is fascinating, exciting, and dynamic. The Pew Internet and American Life Project’s Mission Statement explains that its goal is to: “. . . create and fund original, academic-quality

research that explores the impact of the Internet on children, families, communities, the workplace, schools, health care and civic/political life. The Project aims to be an authoritative source for timely information on the Internet's growth and societal impact, through research that is scrupulously impartial"¹²

The Project intends to publish 15 to 20 research reports per year of varying size and scope. Among the topics of these reports are: "Cyber-Faith: How Americans Pursue Religion Online" (Larsen 2001); "Getting Serious Online" (Horrigan 2002)¹³; "Use of the Internet at Major Life Moments" (Kommers 2002); and "Online Communities: Networks that Nurture Long-Distance Relationships and Local Ties" (Horrigan 2001). The report that is most relevant to this article, however, is "Teenage Life Online: The Rise of the Instant Message Generation and the Internet's Impact on Friendships and Family Relationships" (Lenhart and Rainie 2001).

Lenhart and Rainie, in the "summary of findings" which introduces the article, deliver a powerful statement. And please keep in mind—this research was published in June 2001. It is reasonable to assume that the statistics are even more compelling today. Seventeen million young people ages 12 through 17 already were using the Internet in 2001, which represents 73 percent of that age group. Not only do 76 percent of the online teens declare that they would miss the Internet if they were not provided access, almost one half (48 percent) say that using the Internet improves their relationships with existing friends. Approximately 56 percent of all 12-through 17-year-olds use instant messaging (IM) and report that this form of communication holds a key place in their lives. In fact, one fifth of this online group asserts that instant messaging is the main way they deal with their friends.

The "main way that they deal with their friends"? Anyone interested in communication, conversation and dispute resolution cannot ignore the dramatic cultural change that is occurring. These online exchanges are not merely superficial. A significant number of teenagers use IM for serious communications, including beginning and ending relationships or relating unpleasant thoughts or feelings. Thirty-seven percent of online teens, according to Lenhart and Rainie, report that they have used IM to communicate something that they would not have said in person. There is a wealth of provocative information in the "Teenage Life Online" report. The "Teens and Their Friends," section, for example, reports that face-to-face and telephone communications are being replaced, at least in part, by e-mail and IM. Some teens believe that the Internet allows them to show their true personalities more easily than they can face-to-face. In a distinctly ageless way, asking someone out on a date can be an unnerving event. Seventeen percent of online teens have used IM to ask someone out.

Other relevant findings can be cited, but the material above is sufficient to make the point. The ways you and I communicate are changing, and those changes have implications for dispute resolution. But the ways in which our kids are communicating will have greater implications.

The next generation is developing an intuitive comfort level online that will elude, if not baffle, many of us. Their electronic interactions may be ill suited by their nature to existing dispute resolution processes or models. Additionally, the technology and language of computer-mediated communication with which kids are so familiar may feel awkward to experienced practitioners. Accordingly, experienced problem solvers and dispute resolvers may be unable to participate effectively online.

The Teenage Life Online report, however, does not present a universal endorsement of online communications. Most teens, for instance, do not believe that the Internet is especially helpful when it comes to making new friends. For instance, 67 percent of online teens believe the Internet helps “a little” or “not at all.”

But even among the teens, we can see that age makes a difference. Younger teens can be more comfortable communicating online than teens just a few years older. The responses regarding making new friends are not uniform, for example. Younger children feel more strongly than older children that the Internet helps them make new friends. Thirty-seven percent of younger teens claim that the Internet helps them create new friendships, according to the Lenhart and Rainie study. Younger teens 12-to-14 years of age are more likely to use IM to break up with someone. Almost one-fifth of that age group has ended a relationship using IM.

In the 21st century, children are being introduced to computers and books simultaneously. My wife and I have a three-year-old who, not unlike many three-year-olds, loves to play on the computer. Our daughter literally is learning computer skills while she is mastering her ABCs. The real question is not whether you and I will be able to help resolve disputes when our teenagers move into adulthood. The real question is whether we will be ready when the next decade of children weaned on computers joins them.

Notes

1. Numerous different processes are available to address disputes (e.g., arbitration, mediation, negotiation, and early neutral evaluation) and each process may have several distinct models. For instance, mediations can be transformative,

evaluative, or problem-solving/facilitative. The behavioral evolutions discussed in this article may impact different models to varying degrees. The dramatic changes underway may be so momentous; however, that new ADR processes and models are required.

2. See, for instance, Katsch and Rifkin (2001) and Rule (2002).

3. See, for example, the American Bar Association E-Commerce and ADR Task Force Report at <http://www.law.washington.edu/ABA-eADR/home.html>.

4. See Tidwell and Walther (2002), citing Kiesler (1986); Kiesler, Siegal, and McGuire (1984); Walther (1993); and Walther and Burgoon (1992).

5. The references cited in note four also provide information on this point.

6. For example, see Hancock and Dunham (2001) and Walther (1997). Additionally, social identity and de-individuation theory maintains that the absence of nonverbal cues in computer-mediated communication causes parties to form impressions based on social categories rather than interpersonal cues. See the ABA E-Commerce and ADR Task Force Report (note three), citing Lea and Spears (1992).

7. Information and uncertainty are inversely proportional — the more I know, the less uncertain I feel. While uncertainty reduction strategies may be limited in computer-mediated communication, research indicates that a more intensive use of the available strategies may be sufficient.

8. See Joinson (2001), citing Rice and Love (1987).

9. See Kiesler, Siegal, and McGuire (1984: 1124-1134).

10. Tidwell and Walther (2002: 4, 7, 11, and 19-22).

11. The “disinhibition effect” can be powerful in cyberspace. Psychological barriers are reduced for a variety of reasons. For example, parties engaged in computer-mediated communication may be more open because no one can see them (invisibility); asynchronicity (not having to deal with immediate reactions); “solipsistic introjection” (absence of face-to-face cues combined with online text communication may create the feeling that the online message is a voice originating within [or “introfected” into] one’s own psyche); disassociation (these communications are merely a game); and a neutralization of status (Tin equal to him or her”). See Suler (2003).

12. The Pew Internet and American Life Project, <http://www.pewinternet.org>.

13. "As Americans gain experience, they use the Web more at work, write e-mails with more significant content, perform more online transactions, and pursue more activities online." See Horrigan (2002).

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Thinking Further 1.1

1. What evidence do you see from your experiences with social media that online dispute resolution is a viable alternative to face-to-face dispute resolution? How comfortable would you feel using face-to-face versus online dispute resolution? Why?
2. Describe situations in which face-to-face dispute resolution might be more effective than online dispute resolution. Explain why. Describe situations in which you believe online dispute resolution might be more effective than face-to-face dispute resolution. Explain why.

Reading 1.2

BALANCING ACT: HOW TO MANAGE NEGOTIATION TENSIONS

Susan Hackley

The more aware you are of the tensions underlying a negotiation, the greater your chances of success.

JUDITH LAWSON DREADED her upcoming meeting with the mayor. As head of the city's environmental department, she had promised her staff that she would confront the mayor with their complaints. Unless her office was given the budget to implement proposals to improve air quality and deal with polluters, several key members of her staff planned to quit. Furthermore, they would have no qualms about airing their grievances publicly.

Lawson knew this would be a tough negotiation, for several reasons. The mayor would be understandably upset that a high-profile department was threatening mutiny. Lawson wanted to represent her staff aggressively, but she also worried that too assertive stance might incline the mayor to "shoot the messenger"—which her career couldn't afford.

What made Lawson's task so complicated is that it required her to manage three tensions simultaneously:

1. The tension between creating and distributing value.
2. The tension between empathy and assertiveness.
3. The tension between principals and agents.

These three tensions are "inherent in negotiation, whether the goal is to make a deal or

settle a dispute," write Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello in *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (Belknap, 2000). Managing them is vital for successful negotiations.

Distributing Value Versus Creating It

Some negotiations are purely *distribute*—the task is to divide a fixed amount of value. When haggling over the price of a suit, you can try to affect the distribution of value (who gets how much), but you're unlikely to create new value. Other negotiations are potentially *value creating*: they offer the opportunity to create value by expanding the universe of what is being negotiated. For example, a celebrity might get a suit for free by agreeing to wear it to a well-publicized event. In a trade negotiation, political face-saving tactics may be as important as the tariffs being decided.

Skillful negotiators make sure they get their fair share while exploring ways to "enlarge the pie," to use a popular negotiation metaphor. If you bargain in a job negotiation for a higher salary but miss opportunities to discuss stock options, merit bonuses, or a more generous retirement package, you may end up with a relatively poor deal. At the same time, you need to protect your core distributive interests, being careful not to share too much information (you're desperate for the job) or give away too much value (you'd take half the salary offered).

Judith Lawson knew there would be value-creating opportunities in her meeting with the mayor. If citizens perceived that the city was handling environmental problems more effectively, both the mayor and the environmental department would score a public relations victory. Moreover, it would be in the mayor's

Source: Hackley, S. (2005). Balancing act: How to manage negotiation tensions, *Program on Negotiation Newsletter*, 7–9.

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interest not to incur the disruption of a protracted dispute with his environmental department.

Lawson also recognized the distributive issues at stake. What additional resources could the mayor give her department? How much time would he be willing to spend on their concerns and projects?

Empathy Versus Assertiveness

In many negotiations, you may find it difficult to truly understand the other side's viewpoint. If you're angry with a supplier who sent you shoddy goods, you won't want to hear his sob story about the poor raw materials with which he had to work. Yet a little empathy could inspire you to help him find ways to solve his problem and in turn, ensure better-quality goods.

Asking open-ended questions, listening closely, and Managing Negotiation Tensions demonstrating an understanding of the other sides position will not only allow you to explain your own perspective but may also give you new and useful information.

On the other hand, you don't want to be overly swayed by another's story. Being assertive means being able to express your own interests with confidence and clarity. Skilled negotiators have learned how to be assertive *and* empathetic. They make it clear what they want and need, and they also are genuinely curious to discover what the other side wants and needs.

Lawson was tired of the mayor's excuses for undercutting her department's initiatives, yet she knew she needed to see the situation from his point of view. Once their meeting got under way, she learned to her surprise that the mayor had greater sympathy for her requests than she'd expected and that he felt frustrated and hamstrung by the city council's budget decisions. He had avoided engaging with her department because he felt helpless. This new knowledge

made it easier for Lawson to engage in creative problem solving that answered her needs as well as the mayor's. What about demonstrating to the council how better air quality would elevate the city's reputation as a desirable place to live, which, in turn, would improve real estate values, public health, and economic development?

Being a Principal Versus Serving as an Agent

In her negotiations with the mayor, Lawson was acting as an *agent* for the members of her department, who depended on her to represent their grievances fairly and effectively. As a *principal* in the negotiation, Lawson also had personal interests that were not perfectly aligned with those of her staff, including concerns for her career and her professional relationship with the mayor.

Lawyers represent clients. Money managers give investment advice. Labor leaders negotiate on behalf of unions, and real estate agents represent sellers and buyers. People "constantly delegate authority to others so they may act in our place" as agents, note Mnookin, Pep-pet, and Tulumello. Unfortunately, the principal-agent relationship is "rife with potential conflicts." Looking for differences in incentives is an important part of preparing for a negotiation. A victim in a car accident suing for damages needs to examine her lawyer's interests. Does he have a financial incentive to either settle the case early or prolong it unnecessarily?

One way to manage the principal-agent tension is to acknowledge it up front and treat it as a "shared problem." Before her meeting with the mayor, Lawson and her staff agreed that she would not have authority to make commitments without their approval. What if the mayor offered her a promotion without addressing her department's needs? Lawson resolved not to be swayed by bribes, while her staff promised to back her up should the mayor make punitive moves.

Recognizing that the “use of agents complicates bargaining by creating a web of relationships in which a variety of actors interact” helped Lawson and her team prepare for the negotiation.

Ten Hard Bargaining Tactics

Don’t be caught unprepared by hard bargainers, warn Mnookin, Peppet, and Tulumello in *Beyond Winning*. Here is their Top 10 list of common tactics to watch out for:

1. Extreme claims followed by small, slow concessions. Don’t let a strong demand “anchor” your expectations. Be clear going in about your own demands, alternatives, and bottom line—and don’t be rattled by an aggressive opponent.
2. Commitment tactics. Your opponent may say that his hands are tied or that he has only limited discretion in negotiating. Make sure that these commitment tactics are for real.
3. Take-it-or-leave-it offers. This game of chicken can be countered by making another offer. But watch out: if both parties play this game, you may not get a deal.
4. Inviting unreciprocated offers. When you make an offer, wait for a counteroffer before reducing your demands. Don’t bid against yourself.
5. Trying to make you flinch. Your opponent keeps making demands, waiting for you to reach your breaking point. Don’t fall for it.
6. Personal insults and feather ruffling. These personal attacks can feed on your insecurities and make you vulnerable. Grow a thick skin.
7. Bluffing, puffing, and lying. Exaggerating and misrepresenting facts can throw you off-guard. Be polite but skeptical.
8. Threats and warnings. Recognizing threats and oblique warnings as the tactics they are can help you stand up to them.
9. Belittling your alternatives. Have a firm sense of your best alternative to a negotiated

agreement (*BATNA*), and don’t let your opponent shake your resolve.

10. Good cop, bad cop. One of your opponents is reasonable; the other is tough. Realize that they are working together, and get your own bad cop if you need one.

Awareness Is Power

Beyond Winnings authors believe you’ll be more likely to succeed if you learn to recognize the three tensions that can exist in negotiations. Overlook them, and you may fail to come to agreement, even when an agreement would be better for both sides.

Sometimes the other side is reasonable, and you can still miss opportunities to create value. You might not pursue the necessary in-depth conversation or, if you do, you might not listen well enough to your counterpart. Another pit-fall: not working hard enough to establish the strong relationship that would lead to the give-and-take that results in better deals.

When the other side isn’t reasonable, it’s that much harder to reach agreement. A divorcing couple may find it impossible to listen and empathize with each other, engaging instead in scorched-earth litigation that depletes the very financial resources in dispute. Beware of tough negotiators, who may employ a variety of strategies ranging from the unpleasant to the unethical. (See the sidebar “Ten Hard-Bargaining Tactics”)

“Making the right moves or using good technique will not cause these tensions to disappear,” observe Mnookin, Peppet, and Tulumello. “They are present in most negotiations, from beginning to end, and should be consciously and thoughtfully considered.” Learn to seek additional sources of value while also ensuring you get your fair share. Empathize with the other side and assert your own interests convincingly. And when you’re employing an agent or acting as one yourself, be aware that your interests may not all be shared.

Thinking Further 1.2

1. How appropriate or necessary is balancing each of the three tensions in this article if you are a customer who is negotiating the price of a car? What if you are the car salesperson? Support your responses with information from the article.
2. How appropriate or necessary is balancing each of the three tensions in this article if you are a diplomat charged with negotiating peace between your country and a country with which you are at war? Support your responses with information from the article.