

Chapter 8

Negotiating Models, Strategies and Styles

SYNOPSIS

- § 8.01 Introduction
- § 8.02 The Adversarial Model
- § 8.03 The Problem-Solving Model
- § 8.04 Factors Affecting the Utility of the Adversarial and Problem-Solving Models
 - [1] The Nature of the Dispute or Problem
 - [2] The Other Side's Negotiating Approach
 - [3] Differences in Bargaining Leverage
 - [4] Future Dealings Between the Parties or Negotiators
 - [5] Pressures to Reach an Agreement
- § 8.05 Negotiating Strategies and Styles
- § 8.06 Competitive (Hardball) Style
- § 8.07 Cooperative (Softball) Style
- § 8.08 Competitive-Cooperative (Hardball and Softball) Style
- § 8.09 Choosing a Negotiating Style and Strategy
- § 8.10 Style and Strategy Combinations
 - [1] Competitive and Adversarial
 - [2] Cooperative (or Competitive-Cooperative) and Adversarial
 - [3] Competitive and Problem-Solving
 - [4] Cooperative (or Competitive-Cooperative) and Problem-Solving
- § 8.11 The Overall Importance of Flexibility and Credibility
- § 8.12 Summary of Style and Strategy Characteristics, Advantages, and Disadvantages

§ 8.01 Introduction

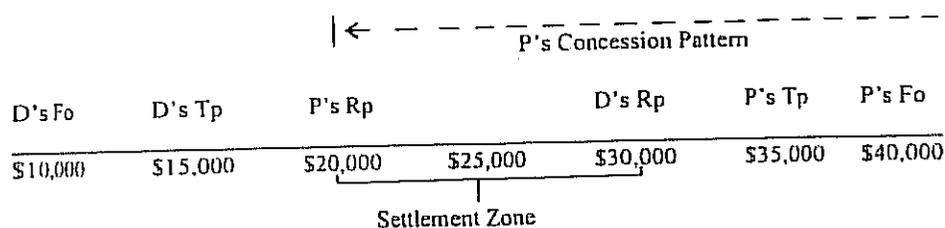
As introduced in the preceding chapter, the existing academic literature about the negotiating process has given rise to two distinct models of negotiating that are particularly helpful in understanding what negotiators do and what they ought to do. These descriptive and prescriptive models are useful frameworks for bridging the gap between theory and practice in that they provide a conceptual overview of the negotiating process that is eminently practical in deciding what overall negotiating approach to use in particular circumstances.

§ 8.02 The Adversarial Model

The adversarial model of negotiation (sometimes called "competitive," "zero-sum," "individualistic," or "distributive bargaining") is the most commonly used approach to legal negotiations. It focuses on "winning" in the sense of maximizing the likelihood the client will prevail and what the client receives upon prevailing. Each side strives to get as much of the thing bargained for (usually money), and the more one side gets, the less the other side gets. Adversarial negotiators engage in a largely competitive and manipulative process in which a series of concessions is made from initial, polarized positions to arrive at a compromise point which is perceived to be either roughly equivalent to what a court would award or more desirable than taking the risk of what might happen in court.

Adversarial negotiation usually involves five stages. First, each party prepares for the negotiation by establishing her "target" and "resistance" points, and estimating the target and resistance points of the other side. A "target point" is the best result a party realistically expects she can obtain, and her "resistance point" is the point below which she will not make any further concessions and will resort to her best alternative to negotiation such as going to trial. From these target and resistance points, the parties plan their first offers (which are set somewhere beyond their target points), and establish their concession patterns in light of the ultimate "settlement zone" created by the overlap between the parties' resistance points.

For example, if P sues D for personal injuries sustained due to the alleged negligence of D, the parties' target and resistance points, first offers, concession patterns, and settlement zone may look like the following:



P's Fo = P's first offer
 D's Fo = D's first offer
 P's Tp = P's target point
 D's Tp = D's target point
 P's Rp = P's resistance point
 D's Rp = D's resistance point

In the second stage, the parties define the issues and often make their first offers or proposals. Third, the parties exchange information in the course of

presenting their varying positions and arguments in support of those positions. Fourth, they bargain toward compromise by analyzing and making concessions. And fifth, the parties conclude the negotiation by executing settlement documents or releases if an agreement has been reached, or, if no agreement can be reached, by resorting to their best alternative to negotiation such as going to trial.

The adversarial model is based on four assumptions. First, the model assumes that the parties desire the same goals, items, or values (*e.g.*, money). Second, the model assumes that the parties are in conflict because they are bargaining over the same "scarce" goals, items, or values. Third, it is assumed that the matters to be bargained for are limited to those that a court would award, whether money or something that the law may compel a party to do or not to do. Finally, the model assumes that the best solution is predicated upon a division of and compromise over the goals, items, or values at issue. As summarized by one scholar:

The adversarial paradigm is based almost exclusively on the simple negotiation over what appears to be one issue, such as price in a buy-sell transaction, or money damages in a personal injury or breach of contract suit. The common assumption in these cases is that the buyer wants the lowest price, the seller the highest; the plaintiff wants the money demanded in the complaint and the defendant wants to resist paying as much as possible. Each dollar to the plaintiff is a commensurate loss to the defendant; the same is true with the buyer and seller. Given this description of the paradigmatic negotiation, the negotiator's goal is simply to maximize gain by winning as much of the material of the negotiation as possible. Underlying this general assumption are really two assumptions: first, that there is only one issue, price; and second, that both parties desire equally and exclusively the thing by which that issue is measured, in most cases, money.¹

Critics of the adversarial model contend that its underlying assumptions and method of negotiating often limit the quality of the solution to the parties' problem or dispute. By assuming that the parties desire the same goals, items, or values (such as money) and therefore are limited to bargaining over the same scarce resource, the parties may overlook the fact that they really value these goals or items unequally or have completely different goals in mind. When these differences are not taken into account, the parties may fail to consider alternative solutions, such as trading a smaller sum of money for the performance of an act or service by the other side. Moreover, by assuming that the matters to be bargained for are limited to those that a court would award, the parties often limit their solutions to purely "legal" ones without considering extra-judicial alternatives that may better satisfy both parties' goals, values, or needs.

For example, if a former husband and wife are in dispute about an appropriate increase in the amount of alimony the wife should receive, and the wife contends she needs \$300 more per month than the husband says he is able

¹ C. Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 U.C.L.A. L. Rev. 784 (1984).

to afford without straining his cash-flow situation, a strict application of the adversarial model may result in the parties splitting the difference at \$150 more a month or some other amount they think a court might award. However, if the wife's underlying need for the additional \$300 is to allow her to make payments on a new car over a two-year period, and the former husband is the owner of a car dealership, he may be able to give her a car from his inventory in exchange for the wife's agreement to forego a \$300 increase in monthly support payments. In this way, the wife receives the item that is of greater value to her (the immediate use of a dependable car), and the husband obtains the goal that is most important to him (preserving his future cash-flow situation).

Critics of the adversarial model also contend that the process by which adversarial negotiations are conducted tends to undermine the quality of potential solutions in two ways. First, the process of exchanging offers, counteroffers, and concessions may not be helpful when the parties are faced with multiple issues. Second, the competitive nature of adversarial negotiation tends to result in argumentation, manipulation, and deception that may inhibit creativity in finding solutions, leave the parties resentful even if an agreement is reached, and impair their future relationship.

§ 8.03 The Problem-Solving Model

The problem-solving model of negotiation (sometimes called "cooperative," "accommodative," "collaborative," or "integrative bargaining") focuses on identifying the parties' underlying interests or needs to develop a broad range of potential solutions from which an agreement can be fashioned that satisfies as many of the parties' mutual needs as possible. Unlike the adversarial model, which emphasizes maximizing individual gain at the expense of the other side, problem solving emphasizes maximizing the parties' joint gain. Problem-solving negotiators engage in a largely cooperative and collaborative process that strives to create a mutually satisfactory solution that is not necessarily limited to traditional judicial remedies.

The problem-solving model is based on four assumptions. First, the model assumes that the usual objective of obtaining money damages is actually a proxy for more basic interests or needs apart from merely those things that money can buy. Second, the model assumes that the parties' interests or needs are often not mutually exclusive. Third, it assumes that by identifying the parties' underlying interests or needs, the parties can come up with a greater number of possible solutions. And fourth, the model assumes that by exploring a greater number of possible solutions, the parties are more likely to find a solution that mutually satisfies their interests or needs.

The problem-solving model is usually applied in five stages of so-called "principled negotiation."² First, the parties plan for the negotiation by identifying each side's underlying interests or needs. These interests, which essentially constitute the underlying *reasons* for the parties' objectives or goals, are identified in light of the financial situation of the parties, their social

² See R. Fisher & W. Ury, *Getting to Yes* 4, 17-98 (1981).

and pr
case.

Sec
the pr
of foc
each

Thi
soluti
Fourt
mutu
need
differ
opini
the n
exec
if no
nego

Ev
edge

and psychological needs, their moral perspectives, and the legal issues in the case.

Second, the parties make a conscientious effort to "separate the people from the problem"—a mindset that attacks the problem, not each other. Instead of focusing on stated "positions," they discuss and share information about each other's interests or needs to see where they are shared or in conflict.

Third, the parties engage in a "brainstorming" session to generate as many solutions as possible that may satisfy the interests or needs of both parties. Fourth, the parties choose the most reasoned solution that maximizes their mutual gain. Concessions might be made by trading off different interests or needs, and, where interests conflict, the parties strive to resolve their differences based on some objective standard (such as market values, expert opinions, customs, industry standards, or the law) which is independent of the naked will of either side. Finally, the parties conclude the negotiation by executing settlement documents or releases if an agreement is reached, or, if no agreement can be reached, by resorting to their "best alternative to a negotiated agreement" (BATNA) such as going to trial.

Even the strongest proponents of the problem-solving approach acknowledge its limitations. As summarized by one scholar:

Several difficulties may confront the skeptical problem solver. First there is the problem of perceiving resources as finite. In some legal disputes, for example, a case involving a simple transfer of limited dollars or other valued items from one side to the other, it may appear impossible to expand what is available to both parties. A second barrier may be the perceived inequality of power between the negotiating parties. If one side has power in the legal, economic or psychological sense during the negotiation, the weaker party may have insufficient leverage to use problem-solving techniques where the stronger party knows it can gain a great deal by exercising power in a conventional negotiation. Third, an attempt to satisfy needs may itself thwart the problem-solving approach in a situation where, for example, one of the parties has a need for revenge or punishment. Fourth, there may be limited psychological resources. Where one of the parties is used to a competitive style of negotiation, the execution of a problem-solving method may be viewed as impossible unless the other party becomes a problem solver. Finally, a problem-solving model based on a theory of needs has its own limitations. It will not solve all negotiation dilemmas, but it still offers a potentially more systematic and effective way of thinking about negotiation.³

§ 8.04 Factors Affecting the Utility of the Adversarial and Problem-Solving Models⁴

Many negotiations involve neither a purely adversarial nor a purely problem-solving approach. Thus, negotiators frequently use more than one of these

³ C. Menkel-Meadow, *Toward Another View Of Legal Negotiation: The Structure of Problem Solving*, 31 U.C.L.A. L. Rev. 829-30 (1984).

⁴ See D. G. Gifford, *A Context-Based Theory of Strategy Selection in Legal Negotiation*, 46 Ohio State L. J. 58-93 (1985). See generally, D. Pruitt, *Negotiation Behavior* (1981).

approaches in a single negotiation. For example, the parties might start with an adversarial approach and then move to a problem-solving one, or they may apply different approaches to distinct issues in the case. While it sometimes may be psychologically difficult to shift between approaches, particularly when a highly competitive adversarial approach is taken at the outset and the parties then try to engage in problem solving after egos have been frayed or hurt, the willingness to be flexible in shifting one's approach often makes the difference between reaching and not reaching a satisfactory agreement.

In deciding which negotiating model may be most effective in a particular case, the following factors should be considered:

[1] The Nature of the Dispute or Problem

The nature of the parties' dispute or problem often has a significant impact on the relative effectiveness of the adversarial or problem-solving approach. For example, the adversarial model may be better suited when the parties are bargaining solely over a fixed and finite matter such as money. If the only issue is how much one party will pay the other, and the gain to one party will necessarily be at the expense of the other, this "zero-sum" controversy rarely provides an opportunity or incentive for the parties to collaborate in expanding the resources they might divide or trade to their mutual gain. Thus, if the only issue between a buyer and seller is the price of a single item, or the only issue between the plaintiff and the defendant is the amount of property damage, the adversarial model is likely to be more appropriate.

On the other hand, the problem-solving model may be more useful to the extent the nature of the dispute or problem does not have zero-sum aspects. This is particularly true if the parties are negotiating over multiple issues that they value differently. For example, if the parties are in dispute over the issues of child custody, visitation, and support, it is more likely that a problem-solving approach will produce a more mutually satisfactory solution if the parties consider options such as joint or split custody, and how various visitation arrangements may affect appropriate amounts of child support. Similarly, if the issue between a buyer and seller is not merely price, but involves considerations such as quantity, time of delivery, and manner of payment, the problem-solving approach may be more productive in reaching an agreement addressing these multiple elements. In practice, problem solving is used more frequently in domestic relations, business regulation, and government action cases.⁵

[2] The Other Side's Negotiating Approach

A party's negotiating approach will often be affected by the particular approach taken by the other side. For example, if the other side is unwilling to engage in a problem-solving approach, attempts to employ that model will be largely ineffective because the model presupposes information sharing and collaboration between the parties. This does not mean that a problem-solving negotiator should not try to encourage the other side to use a problem-solving

⁵ See Herbert M. Kitzner, *Let's Make a Deal*, 42-43 (1991).

approach. However, if the effort is unsuccessful, it is unlikely the problem solver will be able to make any headway in the negotiation unless he is willing to accommodate the other side's adversarial bargaining.

Sometimes the other side's negotiating approach conforms to some generally accepted convention or norm that is endemic to a particular geographical area or type of case. In simple personal injury cases, for example, most lawyers and insurance adjusters routinely engage in adversarial bargaining; and plaintiffs' lawyers who enter into contingency fee arrangements, whereby their fee is a percentage of the monetary amount received in settlement or at trial, may be less motivated to engage in problem solving if that approach would produce a settlement that is not exclusively resolved by the payment of money.

In addition, the parties may be reluctant to share their true needs or interests upon which expanded options for a resolution might be explored. For example, a party might be psychologically or financially distressed as a result of the dispute and not want to reveal these matters out of embarrassment or fear of demonstrating weakness. Similarly, particularly when litigation is contemplated or has already commenced, a party might not want to reveal certain information to give "free discovery" to the other side. In either of these circumstances, the parties may be more likely to resort to adversarial bargaining than problem solving.

[3] Differences in Bargaining Leverage

Negotiating leverage stems from the perception of the negative consequences that a party can inflict on his opponent if an agreement is not reached, or from the benefits that a party can bestow on the other if an agreement is reached. The extent of this leverage is largely dependent upon the alternatives available to each party in the absence of an agreement. Generally, the side that possesses the most viable alternative in the event that an agreement is not reached will have greater power over the other side.

A negotiator who possesses greater bargaining leverage over his opponent may adopt an adversarial approach on the theory that his threats will be perceived as more credible and he will thus be able to extract greater concessions from his opponent. Conversely, the negotiator with less bargaining power will often choose the problem-solving model to offset or neutralize the adversarial bargainer's emphasis on a purely concession-based settlement. In essence, the lower-power negotiator will attempt to appeal to the more powerful negotiator's sense of fairness and justice to counteract the latter's tendency to believe that his bargaining position is superior and that any concessions on his part are unwarranted.

When both negotiators have high aspiration levels and possess relatively equal bargaining leverage, rigid adherence to the adversarial model may often result in deadlock. Deadlock may motivate the parties to abandon an adversarial approach and adopt a problem-solving approach.

[4] Future Dealings Between the Parties or Negotiators

The extent to which the parties or their negotiators are likely to have an on-going relationship after the negotiation often affects the incentive for

adopting an adversarial or problem-solving approach. The adversarial model sometimes gives rise to distrust and ill will, and thus the problem-solving approach is more frequently used when the parties or their representatives expect to have future dealings with one another. On the other hand, if the parties or their negotiators are merely engaged in a one-shot transaction or encounter, there will be less incentive to avoid the adversarial model with its concomitant risk of impairing future relations.

[5] Pressures to Reach an Agreement

The pressures placed on the parties to reach an agreement may affect their choice of negotiating approach. For example, a party might want to settle quickly because she needs the settlement proceeds immediately, desires to limit legal fees or other expenses, or wants to avoid the psychological stress of protracted controversy. Similarly, court deadlines or heavy caseloads may pressure the negotiators to expedite an agreement.

Generally, the problem-solving model's emphasis on sharing information to identify the interests or needs of the parties and brainstorming to develop possible solutions is more time consuming than the offer-counteroffer and response-counter-response method of adversarial negotiation. Thus, the greater the time pressure placed on the parties, the more likely they are to resort to adversarial bargaining through the swifter device of reciprocal concessions.

§ 8.05 Negotiating Strategies and Styles

In practice, negotiating strategy is simply the conceptual model or approach chosen in conducting the negotiation—whether adversarial, problem solving, or some combination of the two. Negotiating style, on the other hand, refers to the negotiator's *interpersonal behavior* in the negotiating setting, and often will be affected by the particular strategy chosen. Generally, there are three types of negotiating styles: (1) competitive (hardball), (2) cooperative (softball), or (3) a combination of competitive and cooperative (hardball and softball).⁶ Each has its advantages and disadvantages that should be assessed in choosing an appropriate style.

§ 8.06 Competitive (Hardball) Style

The competitive style is typically characterized by aggressiveness and a confrontational approach. Winning is everything, and personal feelings and interpersonal relationships are viewed as essentially irrelevant. Threats, intimidation, and Machiavellian tactics are sometimes employed.

The advantage of this style is that it tends to pressure the adversary into making concessions, particularly when he is easily intimidated or inexperienced; and extreme demands and hard-nosed positions may sometimes give

⁶ See generally, Gerald R. Williams, *Legal Negotiation and Settlement* 18-39 (1983); Gary T. Lowenthal, *A General Theory of Negotiation Process, Strategy, and Behavior*, 31 *Univ. of Kansas L. Rev.* 69-114 (1982); D. Gifford, *Legal Negotiations: Theory and Applications*, 8-11 (1989).

rise to larger settlements. In addition, the competitive negotiator develops a reputation of strength and toughness that is attractive to many clients. On the other hand, a competitive style frequently alienates the other side and produces mistrust, misunderstanding, and more frequent deadlocks. It often polarizes positions and causes overreaction. Personal relationships may be impaired or destroyed, thus making future negotiations with the same party or negotiator more difficult.

The competitive style may be effective when dealing with an inexperienced negotiator or where the parties and their representatives are involved in a one-time adversarial relationship. On the other hand, if the parties intend to have an ongoing relationship, the competitive style is undesirable because of its propensity to cause mistrust and alienation. For example, this style is generally not well suited for business negotiations.

The negotiator who adopts a highly competitive style can minimize its negative effects by focusing on the subject matter of the negotiation rather than on personalities, and after an agreement is reached, by initiating an effort to repair any damage that has been caused to personal relationships.

§ 8.07 Cooperative (Softball) Style

The cooperative style is the antithesis of the competitive style. The cooperative negotiator places a premium on interpersonal relations, and strives for common ground, shared interests, and understanding between the parties. The style is typically sincere, accommodating, and low key. While it should not be confused with weakness, it often conveys that image.

The advantage of this style is that it tends to reduce the risk of deadlock and produces faster and more long-lasting agreements. In addition, the parties usually come away from the negotiation with their egos intact and a disposition to continue their relationship in the future. The disadvantage is that the cooperative negotiator may have a tendency to avoid confrontation and make too many concessions. Sometimes a more favorable agreement is forsaken for the mere goal of reaching an agreement.

The effectiveness of a cooperative style depends upon the willingness of both sides to forthrightly exchange information. If the cooperative negotiator is pitted against a competitive opponent, the latter may gain an unfair advantage by obtaining information from the former without reciprocating. In addition, the competitive bargainer may misinterpret the cooperative style as a sign of weakness and escalate her aggressiveness. Thus, the cooperative negotiator should also understand competitive tactics so that she can offset them in appropriate circumstances.

§ 8.08 Competitive-Cooperative (Hardball and Softball) Style

The competitive-cooperative style represents a middle ground between hardball and softball. Here, many of the advantages of the competitive and cooperative approaches are combined in a style that is professionally amicable, open-minded, but firm. Under this approach, realistic concessions are made

to satisfy the objectives of both parties that are consistent or not mutually exclusive. Conflicting objectives are resolved by compromise or by some creative solution that maximizes as many of the parties' remaining objectives as possible.

The advantage of this style is that it preserves personal relationships and facilitates long-term agreements. The disadvantage is that the approach is largely unworkable unless both sides are genuinely willing to "work together" to resolve their differences—an attitude that may be inherently difficult to adopt in the face of a heated dispute. In addition, the approach requires more time and patience.

The competitive-cooperative approach is usually a waste of time if the other side is unrelentingly competitive. However, this approach may be successful if the competitive negotiator has a weak position.

§ 8.09 Choosing a Negotiating Style and Strategy

The particular negotiating style and strategy you adopt will depend upon your own personality, the nature of the dispute, the style and strategy employed by the other side, and the client's interests and objectives which you have identified in preparing for the negotiation. In choosing an effective style and strategy, it is important to bear in mind that (1) no particular combination of style and strategy is always more effective; (2) you should consider being flexible in your choice of style and strategy throughout the negotiation process; and (3) your choice of style and strategy should always have everything to do with your client's interests in mind and nothing to do with your own ego.

Understanding the differences among negotiating styles and between negotiating strategies is highly useful in choosing a particular style and strategy. In addition, understanding how different styles and strategies tend to operate together is useful in choosing an effective combination for a particular case.

§ 8.10 Style and Strategy Combinations⁷

[1] Competitive and Adversarial

When a competitive (hardball) style is combined with an adversarial strategy, the negotiation is usually characterized by hard, intense bargaining. The positions of the parties are likely to be extreme at the outset and remain fairly rigid throughout the negotiation. Concessions are hard to come by, and bluffs, threats, and even *ad hominem* attacks may permeate the process. Deadlocks are frequent, and, even if the parties reach agreement, they sometimes leave the negotiation dissatisfied and with their personal relationship impaired or destroyed.

⁷ See Charles B. Craver, *Effective Legal Negotiation and Settlement* 21-25 (3d ed. 1997).

[2] Cooperative (or Competitive-Cooperative) and Adversarial

When a cooperative (softball) or competitive-cooperative (hardball & softball) style is combined with an adversarial strategy, the prospects of reaching an agreement are enhanced. The negotiation is typically cordial and characterized by a reasoned debate about the various offers and counteroffers presented. Concessions made gradually are "in the spirit of compromise." Bluffs and threats may occur from time to time, but not in the sometimes-acerbic manner employed by purely hardball negotiators. If a settlement is reached, it might include the performance of obligations other than the mere payment of money, and the parties usually will conclude the negotiation with their relationship and egos intact.

[3] Competitive and Problem-Solving

A competitive (hardball) style is largely antithetical to a problem-solving strategy. While the competitive problem solver will participate in identifying the needs of the opposing party, he is likely to be less than completely candid about those needs and seek to de-emphasize them in favor of feigning or inflating the needs of his own client. In addition, the competitive bargainer is likely to advance solutions that solely benefit his side, rather than entertain broader solutions that accommodate the interests of the other side. In short, the competitive negotiator is primarily motivated to explore mutually beneficial solutions only to the extent they maximize his own client's interests.

[4] Cooperative (or Competitive-Cooperative) and Problem-Solving

A cooperative (softball) or competitive-cooperative (hardball & softball) style best complements a problem-solving strategy. The cooperative negotiator genuinely seeks to identify the legitimate interests of both parties, and is willing to explore mutually beneficial solutions in an open-minded manner. A premium is usually placed on the candid exchange of information. The hallmark of the cooperative problem-solver's style is to emphasize common ground and minimize the parties' differences. Generally, when a cooperative style is combined with a problem-solving strategy, the prospects for reaching a mutually satisfactory agreement are at their greatest.

§ 8.11 The Overall Importance of Flexibility and Credibility

Regardless of the negotiating style and strategy you choose for a particular case, you should always be flexible in switching or modifying that style or strategy in appropriate circumstances. It is not unusual for a negotiator to use more than one style or strategy in a single negotiation session or during different stages of protracted settlement discussions. In short, if it becomes clear that a particular strategy or style is counterproductive, it may be beneficial to make an adjustment.

Along with flexibility, your choice of style and strategy must be credible. Persuasion depends largely upon believability. If your style or strategy is

strained or disingenuous, it is unlikely you will be effective in successfully negotiating the case. A common mistake made by inexperienced negotiators is adopting a style or strategy that is at odds with their own personality. If credibility depends upon using a particular style or strategy that you are uncomfortable with, ask a colleague who is more skilled in using that style or strategy to join you in the negotiation.

§ 8.12 Summary of Style and Strategy Characteristics, Advantages, and Disadvantages⁸

Competitive (Hardball) Style

- Characteristics:*
- (1) aggressive and unfriendly
 - (2) confrontational
 - (3) intimidating
 - (4) Machiavellian
 - (5) negotiates by ultimatum
 - (6) makes few concessions
- Advantages:*
- (1) pressures inexperienced adversaries into making concessions
 - (2) hard-nosed approach may result in better settlements for one's client
 - (3) establishes reputation for toughness that is attractive to clients
 - (4) may produce one-sided agreements that are advantageous if performed
- Disadvantages:*
- (1) causes anger, alienation, and mistrust
 - (2) polarizes positions and causes overreaction or irrationality
 - (3) impairs or destroys personal relationships
 - (4) damages future relations between the parties or negotiators
 - (5) may induce the losing party to breach the agreement
 - (6) frequently causes deadlocks

Cooperative (Softball) Style

- Characteristics:*
- (1) friendly and mild mannered
 - (2) strives for common ground
 - (3) slow to anger
 - (4) communicates freely
 - (5) prone to make reasonable concessions
 - (6) readily considers alternative solutions

⁸ See X. M. Frascogna, Jr. & H. L. Hetherington, *Negotiation Strategy for Lawyers* 41-42 (1984).

- Advantages:*
- (1) reduces the risk of deadlock
 - (2) produces faster, more long-lasting, and creative agreements
 - (3) maintains personal relationships
 - (4) preserves future relations between the parties
 - (5) decisions are made without anger or overreaction

- Disadvantages:*
- (1) tends to make concessions too easily
 - (2) may unnecessarily result in a less favorable agreement for one's side
 - (3) conveys a weak negotiating image

Competitive-Cooperative (Hardball and Softball) Style

- Characteristics:*
- (1) friendly but firm
 - (2) open-minded and creative
 - (3) confrontational when necessary
 - (4) strives for common ground and mutually beneficial solutions
 - (5) makes necessary concessions
 - (6) communicates forthrightly
 - (7) analyzes alternative solutions

- Advantages:*
- (1) usually results in mutually beneficial solutions
 - (2) produces more long-lasting and creative agreements
 - (3) maintains personal relationships
 - (4) preserves future relations between the parties
 - (5) controls the competitive negotiator
 - (6) encourages concessions from both sides

- Disadvantages:*
- (1) unworkable if the adversary is unrelentingly competitive
 - (2) difficult to use when the parties dislike or mistrust each other
 - (3) largely unworkable if the parties refuse to cooperate
 - (4) sometimes sacrifices unilateral gains for joint solutions
 - (5) requires time and patience

Adversarial Strategy

- Characteristics:*
- (1) most commonly used negotiation strategy

- (2) emphasizes maximizing the party's gain (usually in terms of money)
- (3) constitutes a zero-sum game
- (4) fact and law rationales are manipulated to advance and defend positions
- (5) based on a strict cost-benefit analysis

Advantages:

- (1) effective when the only matter obtainable is a single objective like money
- (2) works well when the parties dislike or mistrust each other and are not interested in a cooperative solution
- (3) negotiation process is less complex and time consuming

Disadvantages:

- (1) creativity is curtailed in arriving at mutually beneficial solutions
- (2) the final agreement may not satisfy the parties' true needs or interests
- (3) parties and negotiators sometimes remain dissatisfied and resentful after agreement

Problem-Solving Strategy

Characteristics:

- (1) the people are separated from the problem
- (2) both parties' needs or interests are identified and acknowledged
- (3) information is freely exchanged
- (4) both parties strive for mutually beneficial solutions
- (5) interests and objectives of both parties are accommodated to the greatest extent possible

Advantages:

- (1) usually results in greater satisfaction to both parties
- (2) negotiations are markedly less intense and testy
- (3) both parties' true needs or interests are often fulfilled
- (4) preserves personal relationships and future relations between the parties and negotiators

Disadvantages:

- (1) usually unworkable when only one objective is sought (e.g., money)

- (2) unworkable if both parties are not committed to finding mutually beneficial solutions
- (3) negotiations are more complex and time consuming
- (4) sometimes unnecessarily sacrifices unilateral gains for joint solutions

Faint, illegible text in the upper center of the page, possibly bleed-through from the reverse side.

