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**COMMERCIAL NEGOTIATION LESSONS,  
STRATEGIES AND TECHNIQUES (Part I)**

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**COMMERCIAL NEGOTIATION LESSONS,  
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Understanding how to negotiate is one of the most valuable skills in every aspect of our lives ranging from something as mundane as when you and your kids are planning the particulars of a trip to the water park to something more serious as selling the family business, negotiating a long term commercial lease or negotiating a multiple seven figure business loan. While to an extent some individuals have extraordinary skills that cannot be taught, coached or trained the same way Michael Phelps has the perfect body and form for swimming, understanding the nature and fundamentals of negotiations will improve your skill set and

aptitude whether you are an expert or a beginner.

For beginners, understanding the variable factors and processes of negotiation will help, assist and benefit your results tremendously. For experts, who generally know the game, having and seeing it broken down from someone else's point of view and perspective may open a new trick or approach that was never thought to enhance your own negotiation skills.

This article will be a multi part series whereby this first part discusses the five factors that generally affects and/or determines the outcome of a negotiation. During the next few months we will discuss the various stages of negotiation and what should be done to improve, advance and support your negotiating skills in relation to such five factors. Then finally in a third article we will give examples of how this plays itself out in two of the most prevalent and relevant business examples: negotiating a loan and negotiating the purchase or sale of a business.

### **NEGOTIATION FACTORS**

The outcome or conclusion of any negotiation is generally determined by the following five factors:

- 1) an informational advantage;
- 2) relative bargaining power;
- 3) creativity;
- 4) effective communication skills, and;
- 5) the ability to follow through.

Before improving your negotiation skills it is important to know and understand these factors, how they affect negotiations, and how to employ them in your favor (or as much as possible). Knowing and understanding these variables will place you in a better starting position and give you a base/foundation of the nuances of how to tackle and undertake a particular negotiation. Below is description of each factor and how it affects the negotiations:

1. **An informational advantage** – The party with an informational advantage will have a much stronger position in the negotiation. It is your job to know all (or as many) of the facts BEFORE entering the negotiation so you can make an informed decision. This includes the background of your counterparty, what he/she is looking for, what you want, any environmental/market factors, and any and all other relevant information. This lets you know what price and terms to start out with, know what terms are reasonable and what are unrealistic and/or a deal breaker.

A simple example is if you are paying \$150 for a product, you should know what your

counterparty has charged in the past for the product. Knowing the other party's position first creates a great advantage of where to start. If you know your counterparty has charged \$100 in the past, you may start at \$80 knowing you can work him/her up to \$100 saving \$50.00 from your usual price. If your counterparty knows your current price, he/she may start at \$200 working down to \$150 to obtain a price \$50 greater than what he/she normally charges.

2. **Bargaining power** – The party with a greater bargaining power will normally dominate the outcome of the relationship whereas for parties with relatively equal power it will come down to the other factors. It is important to recognize when you hold the power and when your counterparty holds the power. If he/she holds the power, you may need to tolerate some unfavorable terms to close the deal or vice versa. Some advantages are having something highly desirable to offer, options with other parties, a monopolistic/elevated position, no need for the deal (i.e. satisfying a possibility vs. a need)... Bargaining power usually is not something you can obtain overnight, but you may have to win over parties with larger bargaining power by working on long term relationships, aligning your interest with them, or changing your long term position before overcoming a lack of power. An example of this is a business with poor financials in its initial years may have little bargaining power with a bank. Building strong financials does not happen overnight, but a few years down the line, stronger financials may help the business overcome that disadvantage.

3. **Creativity** – This is about thinking out of the box to turn a win-lose situation into a win-win situation. This is knowing the other party's needs/desires, and knowing what is possible but not already thought of by either party. Sometime it is as simple as bringing a new factor or variables to the table such as increasing the guaranteed minimum number of units or years you are to purchase certain units or satisfying another need or requirement such as providing a limited (time period or dollar amount) or shortfall personal guarantee. Other times it requires going in a completely different direction. In essence, this is about creating value, collaboration, cooperation and interaction to create a deal and make the two parties satisfied. It is not about winning! Many times thinking out of the box merely takes creativity and not dollars!

4. **Effective communication** – Effective communication is not about having a golden tongue, but is about listening and reading the other party to know his/her spoken and unspoken needs, desires and concerns, and then phrasing your communications being cognizant of these and in a manner that is easily digestible by your counterparty. It is about understanding how your words and communication will be interpreted/used by your counterparty and then knowing what to say, when to say it, how to say it, and when not to say too much. By being sensitive to your counterparty's point of view, it makes it easier for your counterparty to digest and easier for you to guide him/her down to your goals.

For instance if you say "we should do this deal because I will make \$400,000 and you will make \$200,000", this does not place your counterparty party at ease as he/she will wonder why his/her company should not make the \$400,000 or that the profits should be split evenly at \$300,000 each. You said too much! An effective communicator will say, "we should do this deal as it will be a win-win where you will make \$200,000 if we can close this transaction." This satisfies his/her needs, but does not disclose more than your counterparty needs to know. It is being cognizant that letting him/her know you are making 2/3 of the profits will make

him/her feel cheated and the money you will earn is none of his/her concern. In essence, it is being cognizant when not to say too much! Many years ago in an advanced trial strategy course, a renowned trial lawyer said to the class-“If and when the Judge rules in your favor leave the courtroom immediately”! Once again, do not say too much.

Essentially, if you are not listening and reading the other party, especially between the lines, you will miss a lot of information your counterparty is indirectly telling you which give you a greater advantage. Effective communication is about taking this additional information from/about your counterparty and using it to your advantage to get the results you desire.

5. **The ability to follow through** – Your reputation will precede you in your negotiations. This is about being able to walk the walk. If the other party knows you will easily and professionally fulfill your obligations without setbacks, conditions, contingencies, and excuses it would put him/her at ease and enable you to achieve more favorable terms. If you are known not to follow through or have a history of renegotiating deals after the fact then the other party will either not want to deal with you or will want favorable perks to entice him/her to deal with the risk of you not following through or a renegotiation.

In summary, the outcome of most deals can be predetermined after knowing how these factors play out. To become a better negotiator and obtain the advantage, you need to know how to maneuver these factors in your favor. While your relative bargaining power is harder to adjust in the short run, it helps to understand what is necessary to obtain that informational advantage, creativity advantage, superior communication skills and ability to follow through in the short run until you can improve your bargaining power. If you need help in these areas we are here to take the lead or guide and assist you if you are at a stalemate or to advise you how to improve your relative bargaining power for the next negotiated transaction.

If there are any legal questions you would like this office to answer in the future, please email the question to us at [info@pozzuolo.com](mailto:info@pozzuolo.com). Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax , pension law and family law litigation.

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