**Tips for Negotiating**

Interest-based negotiation aims to look beyond positions (*what* each party wants) but rather considers their interests (the underlying reasons for *why* they want these things).

This method allows parties to develop options for overcoming a dispute which they otherwise might not have explored - there may be more than one way of addressing the *interests* of the parties - achieving a win-win situation, in contrast to *positions* - which usually involves one party ‘winning’ and the other ‘losing’.

Another way of looking at this is making the pie bigger, rather than dividing the existing pie.

**Steps**

A principled negotiation usually involves the following steps (not necessarily in this order):

Opening Statement

* Usually parties open the session by confirming that they have come to negotiate in good faith, clarifying the level of authority the lawyers have, and explaining that the proceedings will be confidential
* Parties decide between themselves who will commence the negotiation and this team begins by explaining the facts from the point of view of their client
* This is an opportunity for you to express your client’s concerns, experience of the dispute, and goals for the resolution of the dispute.
* The other team then clarifies any points brought up by the opening team, and adds to the facts if there is anything unique from their client’s perspective.
* During the opening statements, it is usually a good idea to put forward all the information which your client has authorised you to disclose - this is a sign of good faith (and makes the ensuing negotiation run much more smoothly)
* Each party can take this opportunity to ask questions of the other party and develop an understanding of what they hope to gain from the negotiation process

Exploring interests

* In this section, the teams work off the opening statement in trying to refine the interests of the parties.
* In order to demonstrate that you understand the other party’s perspective, and to clarify what they have said, it might be a good idea for each party to identify what they believe the other party’s interests are.
* Often parties can get sidetracked by their position - this is an opportunity to get to the core of what each party is asking for - their interests
  + Parties will need to look beyond *what* their client wants, to see *why* they want it
    - For example, two parties want title to a house. Party A is attached to the house for sentimental reasons, because it has been his family home for several generations. He is willing to spend money to keep it.
    - Party B has a financial interest because she wants to receive rent from the property.
    - Once the parties recognise that the interests can be addressed without taking a position of having title to the house, there are many other opportunities - one arrangement could be Party A renting from Party B.
    - There are other resolutions that do not require one party getting the house, and the other party getting nothing - the next step is to create options
* It may be an idea to create a visual representation of the interests of each party and where the two parties have matching interests
  + When used effectively, and the delegated writer maintains focus with the other lawyers, this provides an extremely useful tool to identify what interests the lawyers are seeking to satisfy

Brainstorming options

* Once parties feel they have a good understanding of each others’ interests, it may be appropriate to think of some possible resolutions to the dispute
* It is useful to have time brainstorming ideas (without commenting or analysing them)
  + Each team should only give enough information to explain the option
* This section requires restraint by the teams as they suggest different possible solutions **but** **refrain from judging the merits of them**
  + Allows for the creation of an environment conducive to developing many creative ideas which may otherwise have been unable to put forward if they had wasted time arguing each idea offered
* You may want to write these up on the board
* An agreement may incorporate several options from those developed

Evaluating options

* After the teams have brainstormed as many ideas as possible, they should then look at analysing them in light of the interests which have been identified
* Now the parties are able to discuss the options generated and express why they fit or do not fit with their client’s interests
* You may come to a tentative agreement but this is **not** necessary for you to receive a good score
  + If there are some aspects on which the teams do not totally agree, it might be a good idea to agree to speak to the respective clients (this would probably happen in a real negotiation) and confirm whether the arrangements will work

Conclusion

* When you are approaching full time, you should try to bring the negotiation to an end
  + It is **not** necessary to rush to an agreement before the time runs out
  + If you still have things to discuss, and have not come to a tentative agreement, **you will not be disadvantaged in scoring**.
    - In this case you should say something like: ‘Well, I think we have covered some good ground here, and that we have a better idea of where your clients are coming from - we hope that’s the case for you. Shall we call it a day and speak to our clients about what we have discussed and whether those ideas will work?’

Self-reflection

* Each team will be given time to reflect on how they felt the negotiation went
* The teams will, in turn, spend ten minutes individually with the judge where they have the opportunity to explain how they thought they had performed - the judge will award marks for the team’s self-reflection
  + Even if a team has not performed well in the actual negotiation, the self-reflection is an opportunity to improve your score
* The judge will usually offer some feedback, however it is mainly a time for the team to reflect on their own performance, so judges also provide collective feedback once both teams have done their self-reflection

**General Tips**

* Marks in negotiations are also awarded for cooperation and communication between teams and for cooperation between members of the same team
  + Whilst demonstrating cooperation to the judge will earn a team a better score, cooperation, open-mindedness and good faith are essential components to an effective negotiation
  + Even though it may seem odd, members on the same team should communicate with each other in a way which is audible to the judge, for example “I’m not sure that that option will work for our client - do you?”
* Each team is permitted a 5 minute break and this can be useful if you have been blind-sighted by a piece of information which you need to discuss with your partner. But it is important to keep in mind that, as previously stated, if you can openly verbalise that with your partner, this will exemplify good team work
* Sometimes negotiations present circumstances where one team is harsh, oppressive, or demonstrates a lack of good faith or acknowledgement of the other client’s interests. Apart from such behaviour demonstrating a lack of cooperation or respect on the part of one team, it may also inhibit a fair and effective agreement being reached.
  + To overcome this, the other team may call out the behaviour, possibly saying something like “Oh, my partner and I thought that you were on the same page as us. Didn’t we agree to act fairly? That doesn’t seem like a fair solution for us…”
* These tips cover a range of aspects of negotiating, however it will be important for each competitor to develop a method/technique of negotiation which is natural to them