

Workshop 3B

Principles in Practice – Applied Ethics
and Professionalism in Negotiations

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An Introduction to Negotiation Skills – Fundamental Concepts

“If you want a hamster, you start by asking for a pony” – Annabel, age 6, posted on the internet

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Preparing for Negotiations

- Information Gathering
- Establish goals
- Unknown information

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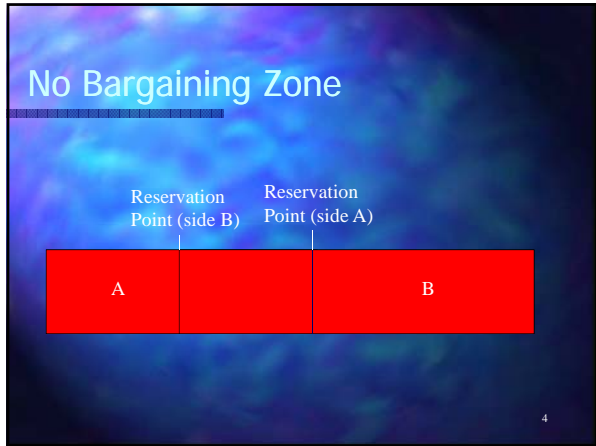
Bargaining Zone

Reservation Point (side A) Reservation Point (side B)

A Bargaining Zone B

Aspiration Point (side B) Aspiration Point (side A)

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- ### Reservation Points / Prices
- "Line in the sand"
 - Everyone has RP
 - Not static
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- ### Common factors affecting RP
- Alternatives to agreement
 - Preferences for reaching agreement
 - Estimate of the probability of future events
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Common factors affecting RP

- Risk tolerance
- Value party attaches to time
- Transaction costs
- Effect reaching agreement has on future relationships / opportunities

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BATNA

- "Best alternative to a negotiated agreement"
- Often both sides' BATNA = going to court
- Same BATNA <> value for different parties
- Indirect costs & transaction costs

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Own RP

- Classify objectives
 - Ideal
 - Target
 - Minimum
- Prioritise objectives

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Opposing Side's RP

- Means goals vs end goals
- Strength of position
- Perceptions of opposing party

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Goal / Aspiration Points

- "Do your best" approach
- Specific, concrete goal
- Prospect theory
- Estimate opposing side's RP
- Be careful of "cold war"

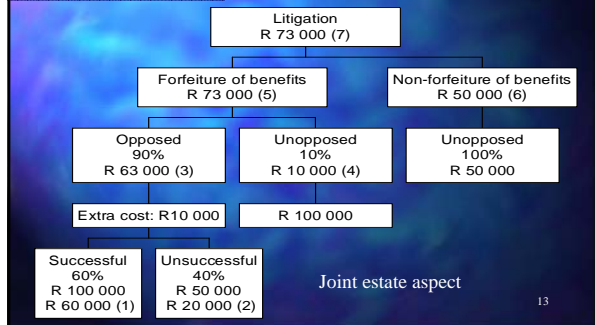
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Risk Tolerance

- Individuals usually risk averse
- Declining marginal utility of money
- Uncertain BATNA vs. certain settlement
- "Repeat player" – risk neutrality

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Decision Trees: Tree



Negotiation Strategies, Styles and Tactics

- Competitive endeavour
- Understand all activities as attempts to:
 - Identify bargaining zone
 - Expand bargaining zone
 - Capture territory in bargaining zone
 - Find agreement on specific deal point

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Styles

- Distributive (win / lose)
- Integrative (win / win)

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Approach regardless of style

- Small concessions / reciprocity
- Pre-empt objections
- Don't give the other side ideas

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Listening Skills

- More asking, less telling
- Take notes
- Listen for points of disagreement AND points of agreement
- Effect of silence
- Give information to persuade
- Don't give the other side ideas

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Towards Creative Agreements

- Not only items court would award
- "Common practice"
- Not always "zero-sum"
- Means goals vs end goals
- Fight for interests, not positions

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Example: Opening Position

- Inherently reveals information
- Influence other side
- Tough opening position
- Shock opening: strong / weak case

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Example: Opening Position

- First offer normally <> last offer
- Standard terms and contracts = opening position
- Identify other sides' "non-negotiables"
- Reject incredible opening position immediately

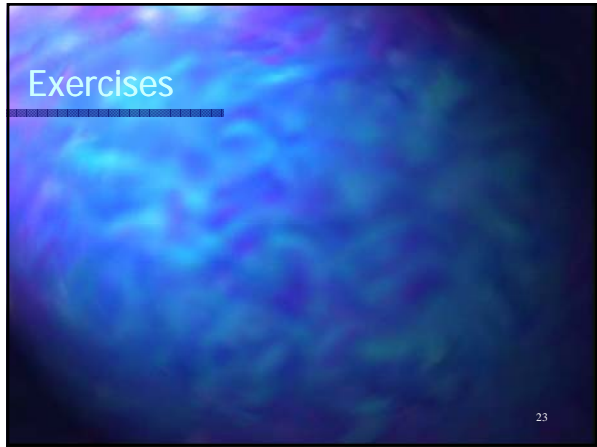
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Things to Avoid When Negotiating

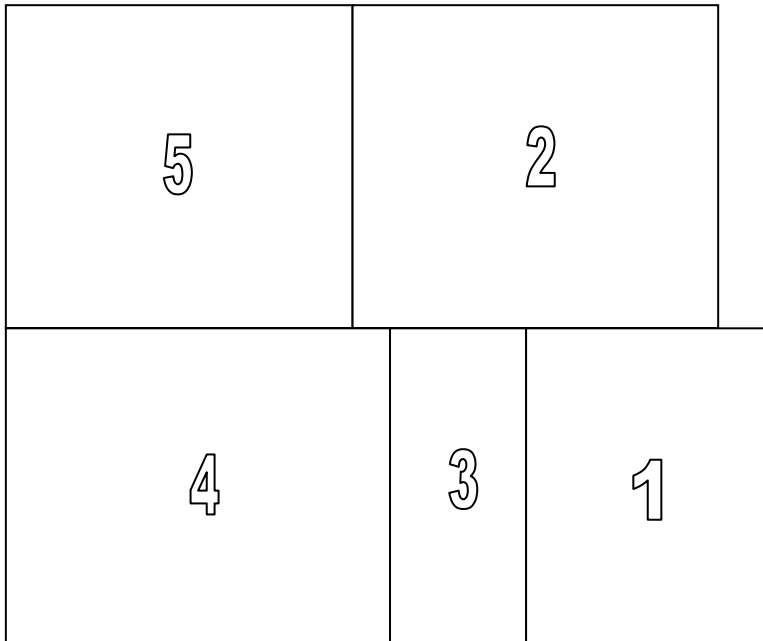
- Ignoring stability of outcome
- Talking too much yourself
- Just saying "no"
- Overstating your case
- Highlighting your own shortcomings
- Denying obvious weaknesses in your position

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Exercise 1 Side A

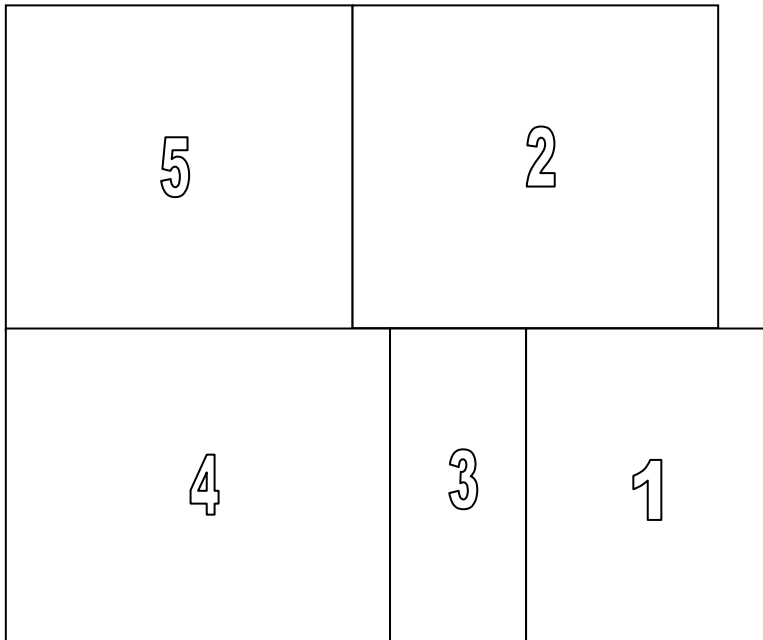


Your client, Mr Jones, the owner of erf 1 has just sold the property to a buyer as he is moving to a retirement village. He also owns the adjacent stand (stand 3) which itself cannot be built upon as it is too small. The buyer of stand 1 has indicated that he doesn't really need the adjacent stand (stand 3) but would buy it for R 300 000. The owners of stand 4, Mr & Mrs Smith, had previously expressed interest in stand 3 but nothing came of it. The only other possible buyer, the owner of stand 2, is presently abroad but he is not interested in acquiring stand 3. This is not known to the Smiths. Approach the Smiths and try to sell the stand to them for as much as possible, but for not less than R 300 000.

Exercise 2 Side A

Your client is Mr. Julius Jeppe, a partner in the biggest law firm in Durban, who is also in charge of human resources at the firm. He plays a prominent role in society and is inter alia chairperson of the ethics committee of the KZN Law Society. He is accused of making certain inappropriate suggestions to a female PA, Linda Grey. She claims that during a performance management interview he told her that while he is satisfied with her job performance her interpersonal relations are not up to scratch. He suggested that she relaxes more and get in touch with her feminine side. She says that he suggested that perhaps she should spend a weekend with him in his beach house at Ballito. She claims that being a very religious & principled person this was a traumatic experience to her. When she objected to his behaviour he informed her that she had just blown her chances of ever becoming a partner and that if she knew what was good for her she would leave. Your client denies this and informs you that he has a good reputation and that 70 female employees can all testify that he has never harassed any of them over the years. He claims that Linda Grey is an overambitious troublemaker. It is your client's opinion that Linda is trying to make his life difficult. He explains that Linda and himself were the two candidates for the position he currently holds and that she is jealous about him getting the position. He was advised by his partners that the firm cannot possibly afford the bad publicity that a court case based on discrimination, harassment and constructive dismissal of a female employee would bring about. He has a mandate to settle the matter by way of negotiations for as little as possible with a maximum of R 150 000 severance pay (which equals her annual salary) on condition that the details of the settlement remains confidential.

Exercise 1 Side B



Your clients, Mr & Mrs Smith, the owners of stand 4, has inherited an amount of R 1 500 000 from an aunt and they are now in the position to upgrade and add to their home – a long awaited ideal. They have been informed by their architect that it would be great if they could acquire stand 3, but that they should not pay too much as the more they pay for stand 3 the less money there will be for the building improvements. They are aware of the fact that the new buyer of stand 1 has offered R 300 000 to the owner of stand 1, which was apparently refused. The owner of stand 2, who is presently overseas, may also be interested in acquiring stand 3 as he previously expressed a wish to acquire the stand. Stand 3 is too small to be sold to anybody other than the owners of stands 1, 4 or 2 as it is too small to be utilized independently. Try to buy stand 3 for as little as possible. Bear in mind that the quote for the intended alterations to their existing home on stand 4 amounts to approximately R 800 000.

Exercise 2 Side B

Your client is Linda Grey who informs you that she was discriminated against, sexually harassed & constructively dismissed by the behaviour of her boss Mr. Julius Jeppe, the senior partner in the biggest law firm in Durban, where she worked as an PA for R 150 000 per year. He became overly friendly towards her & suggested that she joins him for a weekend at his beach house at Ballito. When she took exception to this he threatened her with dismissal etc. She would love to take him to court and make him & the firm pay for this. The problem is that he is a very influential person and that she will find it impossible to afford the legal costs of a drawn out court case. She is also aware that other female staff members are too intimidated to testify on her behalf and would most probably testify for him. She needs as much money as possible to set up her own practice in Durban as she cannot leave the city seeing that her bedridden mother is staying with her in the family home. She maintains that she will find it extremely difficult to find a job with another firm in Durban, because other practitioners hold Mr. Jeppe in high regard. She needs at least R 150 000 to set up practice but stresses that she expects more and that she does not want to go to court. She also expects a written apology. She is willing to give up on this should she get enough money to set up law firm.