



# Negotiation Plan Primer

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## *Level 1*

# Starting Off - What and Why?

*Pro Tip # 1: Read the negotiation primer first and then move to this since the former covers all basics extensively and this primer builds from there.*

### **What is a Negotiation Plan?**

Every negotiation arises from a need and is driven by emotion or logic – most often a mix of both. Whether or not we consciously categorise the elements of a problem in this manner, such an analytical understanding is always a part of our thought processes in the pre-negotiation stage. A negotiation plan, quite simply, is a brief, concise document outlining your analysis of the problem, the prospects for your side of it, and your strategy going into the negotiation.

Going into any negotiation, you need to have a clear idea of what your goal at the table is. What your primary interest is, in the simplest possible terms. What your objectives are at large, how the problem feeds into it, your strengths, and your weaknesses. It's also essential to have a concrete estimation of what the other party's goals, objectives, interests, strengths, and weaknesses might be. Estimating their driving interests and objectives is the only way we can practically strategize. Following this, most negotiation plans flow in a logical sequence – at the onset, it has a brief description of the party's goals at the negotiation, followed by their interests, needs and objectives. After identifying the positions and demands made by all sides in a problem, you need to think about the interest underlying that position – what does the party have to gain/achieve from that position? At the stage of writing a negotiation plan, some competitions do not provide the confidential information, so you have the same amount of information to identify your side's interests as the other side. Even though it may not be an explicit requirement, it's always a good idea to show what the other side's perceived interests are as well.

After having a clear idea of what's discussed above, what becomes absolutely important is knowing your options – what's going to happen if the negotiation does not pan out. Negotiation jargon considers two extremes – the Best Alternative to a Negotiated Agreement (BATNA) and the Worst Alternative to a Negotiated Agreement (WATNA). Knowing both extremes tempers your expectations from the negotiation and thus your approach to it, making them very crucial to identify.

Having identified your goals, interests, strengths, weaknesses, BATNA and WATNA, what typically follows is your strategy for the negotiation. Although you might be tempted to treat this like an argument in a project – do not do that! It's far simpler and requires far less work. Here, you're required to string together all the relevant information from the problem to form a bargaining chip, and briefly explain how you intend to use it to achieve the goal you've already highlighted. The mantra for the strategy section is always keep it short and crisp. Explain your strategy just adequately, with the bare minimum words (you've got a very limited page limit anyway).

After providing the strategy, some competitions require the Zone of Possible Agreement or ZOPA. Although it's unrealistic to define a ZOPA without having access to the confidential information of your side, competitions that make ZOPA compulsory in the negotiation plan generally do it to test your analysis of the problem – whether or not you've correctly identified the points of disagreement and where the other party is likely to agree on the issue using the strategy you've already described. You need to briefly highlight in what range you see an agreement being reached with the strategy you're employing, factoring in the other party's positions and interests.

To summarise, a negotiation plan is a short reference sheet for your negotiation strategy. It contains all the relevant information – your goals going into the negotiation, your interests, needs and objectives, your strengths, and weaknesses and those you perceive in the other party, your BATNA and WATNA, your strategy, and finally, your ZOPA. Although the required elements may vary from competition to competition, this primer will try and provide you with a comprehensive picture of everything a negotiation plan might contain, and how exactly you can go about it.

## **Types of Negotiation Plan and Difference in Approach**

Different competitions follow different formats for their negotiation plan component. While you are expected to understand the broad differences between these formats, substantively, the preparation and execution remains the same. The 2 main classifications of structure are -

### **1. GI Based General Plan - Both Sides**



This format is followed in very few competitions like Jindal-Khaitan and RGNUL, where the teams are given *only* the General Information (“GI”) and are not allotted any side. The objective is to make a single plan with the analysis of both the parties. Since the Confidential Information (“CI”) is not provided, such a format usually lacks detailing and precision. However, on the other hand, the same reason allows you to be more creative with your predictions and assumptions about the confidential information. Such a format *does expect* you to make reasoned predictions and mould them into the plan. In the absence of the CIs, the focus is more on components like Positions & Interests, Strengths & Weaknesses, BATNA/WATNA etc. and not on the strategy and solution component.

## **2. CI Based Specific Plan - One Side**

This is the most common format of negotiation plans, used in competitions like ICC Paris, HSF-NLUD INC and also in our very own Univs. In this, in addition to the GI, you are also provided with a side and its CI. Thus, this is more precise in terms of your party’s interests and authority to settle. Thus, the plan is expected to be more nuanced with exact figures/information from the problem. The focus is heavily on strategizing and thinking of creative solutions to bridge the conflicts and harmonise interests. In terms of the other components such as positions, interests, BATNA, WATNA etc., it is a good practice to anticipate for the other side and include that in the plan as well. The scope of prediction and assumption making automatically reduces since you have more information, but the accuracy of prediction increases.

As you might have figured out, the difference is not very major except for the segments you are required to focus *more* on. This primer has been designed to suit both the kinds of formats!

### **Objective of Making a Plan?**

Before explaining the objective of making a negotiation plan, it is imperative to understand that one should try to make a negotiation plan even if the particular negotiation competition in question does not require such a plan to be submitted. A negotiation plan would help in providing comprehensive information regarding your negotiation strategy in 1-2 pages. This would help you to easily navigate through the actual negotiation round and provide you with greater clarity regarding the problem.

The primary objective of a negotiation plan is to lay down your negotiation strategy. Making a proper plan for your negotiation strategy can significantly increase your chances of getting a favourable outcome



from the negotiation round. A negotiation plan would help in developing a clear understanding of all the components that are required in a negotiation as briefly mentioned above. Each component will be discussed in greater detail in the next section.

Therefore, a negotiation plan would enable you to be better prepared for contingencies and surprises that may be thrown at you during the negotiation round. It would also help improve your confidence and tackle possible nervous shit-shows during the negotiation round. Additionally, a negotiation plan can help ensure that the negotiation process is efficient and doesn't get bogged down on unimportant details. Finally, a negotiation plan can also help in post-negotiation review by allowing you to reflect on what went well and what can be improved for future negotiations.

In summary, a negotiation plan provides structure and strategy to the negotiation process. It prepares you for potential challenges, helps you understand both yours and the other party's positions, and ultimately aims to achieve the most favourable outcome possible.

## *Level 2*

### Understanding the Matter: Components of a Negotiation Plan

*Disclaimer: Different competitions may prescribe different mandatory/suggested components. Therefore, you must carefully go through the rules and the marking scheme. These are the most important and most frequently required components of a negotiation plan and are not meant to be exhaustive.*

#### **1. Positions and Interests**

A crucial requirement in the mode of negotiation followed in NLSIU is that it should be a win-win, to the extent possible. There are no benefits to screwing over your opposition team (notwithstanding the temptation). In fact, that is only likely to result in negative markings. This requirement of 'win-win' begs the question - how can this happen, when the apparent positions taken by the parties are very clearly distinct and often entirely conflicting? The answer to this lies in the distinction between 'positions' and 'interests'. Positions are the stances taken by the parties on any particular issue. Interests are the underlying goals driving the parties to take their stances. Consider this example from my trimester in NLSIU in 2023.



In our Constitutional Law-III course, our professor surprisingly gave us the option of keeping the exam an open book, or a closed book. This choice split our classroom into two broad positions. The first position, led by Suti, was that an open book exam is preferable (because duh). The other position, led by Sidi, was that a closed book exam is better because closed book exams are less lengthy and the evaluation is more lenient. At first glance, both these positions appear quite conflicting. A solution was proposed by an enlightened classmate Suham, to keep the exam closed book while only allowing a case list in the exam.

Why was this smart? You see the initial stances of the parties were fairly straightforward – one party wanted the exam open book, the other party wanted it closed. These were the positions. However, a closer look is needed to understand the broader goals of the parties. For Suti, the goal was to avoid memorising a large number of case names and to minimise the risk of forgetting an important case name in the middle of a 10 mark answer (yes, we've all been there). For Sidi, the goal was to ensure an easy paper and lenient marking. These were the interests of the two sides. As you would have realised by now, the solution cleverly harmonised both the interests to a reasonable degree. Suti won't have to memorise case names but will still need to remember what happened in them, while Sidi can be reasonably certain that the checking is lenient since it is still a largely closed book exam.

This is the difference. While positions will ordinarily be conflicting, the underlying interests will largely be harmonizable. A good negotiator would be able to gauge the other party's interests underlying their positions in order to arrive at a solution. However, notice that neither of the interests are fulfilled perfectly, but to a real and substantial degree. In actual problems as well, it is unlikely that the underlying interests are perfectly harmonizable, but your goal is to find interests which can align to a reasonable degree.

While all of this is well and good, you might be wondering, how do I do this in a negotiation plan? You don't have the other party sitting in front of you to gather information to infer their interests. The answer to this is simple, albeit slightly boring – a close reading. What do we mean by a close reading? Essentially, every time you read a problem and see a party taking a position, try and ask yourself *why* are they taking this position? The answer is usually inferable to some degree from surrounding facts. While it does require a little piecing together, a good negotiation plan problem will always leave sufficient material for you to do some detective work to find the interests at play. For instance, if the position of a party is they will hardball charge 10 Million for a contract. You only have 8 Million. In such cases, there



will usually be some indicative facts - perhaps they are in debt, or they require that much money for a particular acquisition, or for a particular service. This would be the interest underlying the position of requiring 10 Million. To do this properly, you would require some research to understand the background properly. For instance, in this case, basic industry research on acquisitions or debt management would help you piece together the clues better. In your strategy section, you can use this knowledge of the other party's interest to suggest creative solutions - offering to arrange a temporary loan through a connection with a bank that you have, or if you are in with the industry where they are looking to acquire.

Do note, that in a negotiation plan, identifying the positions and interests is typically a separately marked component. A clear cut understanding of the positions and interests will also allow you to strategize better. The representation of this can be done as per your choice, via a paragraph, headings, or even a table.

## 2. Strengths and Weaknesses

Most negotiation plans have a separate marked component for identifying strengths and weaknesses. As you might have noticed, this component is not present in the OG Negotiation Primer? Is this then something new, and limited to negotiation plans? The answer is a resounding no! Every negotiation involves an identification of your strengths and weaknesses, whether it is a 13-year-old asking their mom to buy them ice cream, or the Indian government sitting on a collegium recommendation (if you don't know what this means, it might be a fun read). How often have you heard someone say, 'this is my bargaining chip?' Identifying strengths and weaknesses is no different from this.

Let's revisit the two fleeting examples mentioned in the above paragraph. Imagine you are a 13-year-old child, negotiating with your mother to buy ice cream at a supermarket. You are negotiating on behalf of the child. Here's how an analysis of strengths and weaknesses might look like in this situation

<b>Strength</b>	<b>Weakness</b>
Has the ability to throw a tantrum in the public supermarket and embarrass the mother.	After throwing the tantrum can be grounded for a long time.
Can use a cute baby voice to try and convince their father instead.	Has no independent finances.

<p>Has an excellent relationship with the mothers of other 13 year olds and can use that to embarrass their mother in the society's circle.</p>	<p>The parents usually show a united front against ice cream.</p>
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Looking at this table, you may start wondering if this primer has really been written by people who know anything about negotiation. Unfortunately (or fortunately), it is almost this simple to identify strengths and weaknesses in a real negotiation problem.

Now consider another (and more realistic) example.

*“You are Yohar Pvt. Ltd., a software firm. You have been around since 1893, and are well recognized within the IT Community. However, in recent years your sales have declined from 103.46 Million (USD) in 2018 to 49.47 Million (USD) in 2023. Your analysts have indicated that this is a result of the growth of ‘self-software’ or AI-coding systems. In order to enter this market, you are looking to acquire Zengoriya, an up and coming AI startup. It is a small firm, run by two 22 year old twin brothers, who are new to business. Its value is estimated at 38 Million (USD) due to its cutting edge breakthroughs in generative AI.”*

From this minute paragraph, it is possible to make several inferences as to the strengths and weaknesses of Yohar. Notice that it is well rooted in the community. This indicates that it has strong brand value and good market perception. Similarly, its large scale operations indicate that it has relatively manageable finances (although this can often not be the case, depending on subsequent evidence. The fact that Zengoriya is new to business while Yohar is well established is another bargaining chip in favour of Yohar. Note that a significant weakness of one party may sometimes (but not every time) be a strength of the other party, as was in this case. Similarly, if Zengoriya was strapped for cash and looking to sell a percentage of its business, depending on the context, that could be a strength for Yohar. As for weaknesses, the one fairly obvious weakness is lack of sales, caused by its inability to innovate software development sufficiently.

As a rule of thumb, remember that anything which increases or reduces your bargaining power in a negotiation is either a strength or a weakness. Typically, in making a negotiation plan you should focus on



identifying the 3-4 most prominent strengths and weaknesses and list them in a manner of presentation of your choice.

### **3. BATNA and WATNA**

Negotiation can make you sweat when people do not budge from their positions. This can lead to a stalemate where parties start hardballing, fail to budge and end up losing out on sweet deals. What makes people budge towards the ZOPA (Zone of Possible Agreement)? Having a clear understanding of what their BATNA and WATNA are.

Best Alternative to a Negotiated Agreement (BATNA) is the best alternative option if your negotiation fails to result in a resolution. Correspondingly, WATNA is the worst alternative option if the negotiation does not succeed. Determining BATNA and WATNA requires some creative preemptive and pragmatic thinking.

*Pro Tip # 2: Participants often assume that the BATNA, WATNA in most cases is always some form of winning or losing at litigation. That is not the obvious case! For eg - in a property dispute, the residing party may not want to go to court, and instead maintain the status quo by staying in possession of land.*

*Relevance to Nego Plan:* In addition to helping move the negotiation to the agreement spectrum, a clear understanding of BATNA and WATNA is crucial to understanding the bargaining power of the parties and the urgency of reaching a settlement via negotiation. Consider the following example:

*“Multimillion dollar online fashion retail chain, Visionista Inc. is looking to collaborate with a ‘sustainable fashion brand’ to enhance its public image and simultaneously fulfil its ESG obligations. Among numerous brands in this ‘ethical/sustainable fashion’ line, they reached out to Plant-Pants.com for collaboration. Plant-Pants.com has recently been struggling ever since the pandemic due to a cluttered and old website, shortage of funds to invest in marketing, and dwindling customer preferences. Despite these challenges, Visionista Inc. considered approaching them since they have previously worked together successfully. Plant-Pants.com sees this collaboration with Visionista Inc. as a massive opportunity to regain its sales and profits since it will gain access to their resources including their funds,*



*website, brand ambassadors and famous AI tool used to predict fashion trends. Plant-Pants.com sees this as their only way to re-enter the market and regain the market share it once used to enjoy. However, the founder of Plant-Pants.com, Mr. Bruno Green, is very passionate about the environment and is even more picky about their collaborations that have an impact on his brand's image and his personal perception as a climate activist that has been helping him in his political endeavours. Mr. Green wants Visionista to make certain changes in their production method to make it less harmful to the environment and also adopt eco-friendly packaging. These suggestions have not been very keenly received by the Board of Visionista Inc. who prioritise profits over sustainability. Both parties are meeting to discuss the possibility and terms of the collaboration.”*

The BATNA and WATNA of this problem will look something like this:

	<b>BATNA</b>	<b>WATNA</b>
<b>Visionista Inc.</b>	Move to another sustainable and ethical brand (perhaps, a more successful competitor of Plant-Pants.com) and strike a collaboration agreement without agreeing to any changes in Visionista Inc.'s operations.	No other sustainable brand agrees to collaborate with Visionista Inc without substantial eco-friendly changes in its operations. These changes add immense costs to their production and reduce profits . Visionista's disinterest in making eco-friendly changes receives backlash from the public.
<b>Plant-Pants.com</b>	Gets investment from another large-scale fashion retail chain that helps in survival and gradual regaining of sales, profits and market share.	The only opportunity to save the brand is missed - Plant-Pants.com is forced to close operations since the revenue is unable to meet even the minimum costs of the company. Additionally, the lack of funds negatively affects Mr. Green's political campaigns and career.

This analysis of BATNA and WATNA can be used in a lot of creative ways to improve your negotiation plan and get a better understanding of the negotiation overall. The following inferences can be made:

- The BATNA of Visionista Inc. is more likely than their WATNA since there are many competitors of Plant-Pants.com in the sustainable fashion line who would be willing to collaborate with a giant platform like Visionista Inc. Thus, Visionista Inc. can leverage this and indicate the same in their strengths.
- The WATNA of Plant-Pants.com is more likely than their BATNA since they are already at the edge of falling and cannot afford to lose this contract. The likelihood of “getting investment from another large-scale fashion retail chain”, although practically possible, is very less since there is no information to that extent. This indicates that Plant-Pants.com must go away with a deal from the table and cannot even afford to delay this.
- In strategising, Plant-Pants.com must acknowledge that they have a weak bargaining position. As a consequence, they cannot hardball on their demands since Visionista Inc. can simply walk out of the table without losing much. A good strategy then, for Plant-Pants.com, would be to propose alternative cheaper eco-friendly strategies which would satisfy Mr. Green’s ambitions and also would be agreeable to Visionista Inc.’s board. Simply, a joint press release that Visionista Inc.’s commits to environmentally sustainable practices with the support of Mr. Green would be a big win for Mr. Green.
- In case, Plant-Pants.com is not budging, it is the prerogative of Visionista Inc. to subtly communicate to the other side about the strength of their BATNA to avoid any hostility.

*Pro Tip # 3: Industry-specific research helps immensely in framing your BATNA and WATNA. Demonstrating your research in the plan is the key to better scores. For eg: Company X wishes to acquire a struggling Company Y. Instead of simply writing that Y’s WATNA is that “its stock will soon crash and the company will have to wind up”, you could additionally compare Y to a real-life company which crashed and wound up after facing similar struggles as Y.*

*Pro Tip # 4: In many problems, there might be ‘multiple’ BATNAs and WATNAs. While making a plan, you might get confused as to which one to put. The trick is to put the most likely possibility and to strategically infuse the different BATNAs to the extent they aren’t mutually exclusive or contradictory.*

#### **4. ZOPA (Zone of Possible Agreement)**



The zone of possible agreement (or “ZOPA” as we know it) exemplifies the range in which parties can arrive at a common ground. Usually, the drafters come up with overlapping ZOPA’s to ensure a smooth-flowing negotiation round. However, this does not mean drafters will not put their skills to the test by doing away with a ZOPA. Regardless, one might wonder where the need to mention the ZOPA in a negotiation plan arises from? The answer lies in strategizing for a negotiation. As mentioned in the earlier chapters, a negotiation plan plays an important role regardless of whether it is formally required for the purposes of a competition or not. For instance, before any negotiation, a buyer needs an estimate of the amount of money they might need to offer in order to acquire a subsidiary company from the seller. The idea is to come up with a “reasonable” number, keeping in mind the factors which have been mentioned in the problem, with respect to both the parties. For instance, if the subsidiary has been incurring losses in the past couple of years, it is reasonable for the buyer to assume that the seller will be amenable to part with the said subsidiary for a price lower than the market valuation from two years ago. Similarly, in a negotiation plan, you need to exhibit that you have grasped the positions both parties are coming from and mention the numbers, or any other relevant offers, from the perspective of whichever party you are representing while also being aware of the possible offers from the other party.

## **5. Strategy and Solutions**

Strategy is, perhaps, the most important pre-negotiation work to be done by a participant. In case you have a concrete understanding of the manner in which you envision the negotiation to progress, you will find it much easier to come up with information to leverage during the actual negotiation. Your strategy should involve the following things –

1. An understanding of the order in which you want to discuss agenda points (not to be written in the plan)
2. The main item that you seek in and across the agenda points, and what you are willing to give in return of these things - leverages & disposables
3. (most important) Your justifications for why your offer, or your attempt at leverage, would be accepted by the opponent.

In strategizing, therefore, it is key to know the problem in its entirety and have an appreciation of its segments that are most ripe for invocation. It is also essential to have an idea of what your opponent seeks the most and model your strategy accordingly. Often, this takes the form of “I will agree to concede to demand X, only if I am able to obtain from my opponent A, B, and C, which they would agree to because

\_\_\_”. There is no particular format to the strategy in a negotiation plan, and you can write as a general point-wise segment of the plan.

Solutions, as you would know from the above sections of this plan, lie at the parties’ ZOPA. You are not, however, confined exactly to the ZOPA in proposing solutions, for you are unaware of your opponent’s constraints in the negotiation. On this basis, your estimation of their strengths and weaknesses, BATNA/WATNA are “likely”. Since the ZOPA lies between your constraints and your estimation of your opponent’s constraints, there is quite room for developing solutions that can *potentially be sold* to your opponent. These solutions don’t always have to be simple or mathematical, and can, instead, be *qualitative and creative*. This would mean that a very specific proposal that you anticipate to be potentially sellable to your opponent can be written in the strategies’ section.

*Pro Tip # 5: Keep in mind that the other side’s CI might not explicitly provide them the scope of accepting your grand creative proposals. Hence, try to keep them simple, inexpensive and non-onerous (or self-onerous i.e., the burden to activate it falls on you) so that they are agreeable to the other party. This tip is more important for an actual negotiation round than the plan, since, in the plan you have more creative leeway because there is no real party sitting in front of you.*

Let’s consider a sample problem – *A is the development authority of the country of Tukarm, which has a dictatorial regime, and all decisions of Tukarm are made by Empress Kyotika. A engaged the construction firm M and T to accomplish its plan “Great Tukarm 2047”. Costs of construction have escalated, and M and T desire more money from A to undertake the promised construction activity. In pursuance thereof, M and T attempted to bribe the officials of Empress Kyotika to increase the bill. On finding this, Empress Kyotika ordered the arrest of a few M&T officials.*

Now, in the negotiation, M&T would seek both the release of their official, along with the payment of greater amounts. In case you are representing Empress Kyotika, you may – in pursuit of obtaining M&T’s agreement to not raise prices of construction – agree to the release of their officials. Such a strategy is called ‘leveraging’ which is extremely common in negotiations. Empress Kyotika’s ability to release the arrested official is a huge strength or as we can call, a bargaining chip - which can be constantly used by them to extract their wants from M&T. In order to ensure that this can be leveraged effectively to create the above-discussed psychological sense of indebtedness, it is necessary that it be offered initially as a fig-leaf, leading to the creation of a sense of comfort with M&T’s representatives. When writing this



strategy in your negotiation plan, you can write “Leverage the release of M&T officials in order to reduce the price raise”.

## *Level 3*

### Brainstorming and Writing

#### **Reading the Rules - Starting from Scratch**

Before the problem, it is always important to carefully read the rules of the competition concerning negotiation plans. Rules usually indicate the marking scheme, page limit etc. which are important to register in one’s thought process before reading the problem, so that you can look for the required things in the problem. Essential components of rules that must be figured out at the earliest are: Marking scheme (check samples below), Page Limit, Date of Submission, Formatting requirements and deductions.

<b>CRITERION</b>	<b>SCORE</b>
Knowledge and Use of Facts <i>(Poor -10; Average – 11-14; Good – 15-17; Excellent – 18-20)</i>	
Identification of Positions and Interests <i>(Poor -10; Average – 11-14; Good – 15-17; Excellent – 18-20)</i>	
Identification of BATNA and WATNA <i>(Poor -10; Average – 11-14; Good – 15-17; Excellent – 18-20)</i>	
Overall Strategy and Soundness of Solutions <i>(Poor -10; Average – 11-14; Good – 15-17; Excellent – 18-20)</i>	
Overall Presentation (Language, Structure and Format) <i>(Poor -10; Average – 11-14; Good – 15-17; Excellent – 18-20)</i>	
<b>TOTAL</b>	

*Source: HSF NLUJ International Negotiation Competition Rules 2023*

*Pro Tip # 5: The standard page size of Word is “Letter” and not “A4”, as many competitions require it to be.*

Many times (in national competitions, especially), organisers are lax about such details and thus, it is a good practice to enquire about these details at the earliest by emailing them.

### **How to Read a Problem?**

As you must have figured out by now, a thorough reading of the problem is the most important part of this process. It helps in the identification of all plan components and more importantly, increases the accuracy of predicting the other side’s confidential information. Since negotiation problems, unlike moot propositions, are short and crisp, you have to read between the lines to draw assumptions and inferences. Remember that every line is deliberate and can mean something consequential!

The mantra is simple -

Read alone → Annotate well → Read with your partner aloud → Discuss possibilities, doubts (for clarifications) and predict CIs → Read frequently → Read once before submitting the plan

*Pro Tip # 6: Make sure to raise necessary clarifications within time. Sometimes you might figure out something unique about the problem (could be a fact or an interpretation or some resemblance to real life instances etc.) that other teams might not. In such a case, you must tactically frame your clarificatory questions to derive the most without giving away much!*

### **Researching**

While researching for a negotiation may seem overkill, it is essential to develop an understanding of the context in which your problem is located. The subject-matter of the problem may be alien to you, and commonsensical efforts at understanding and appreciating a problem may not result in success. It is, therefore, reasonable to develop a good conceptual understanding of the problem’s subject-matter through additional research.



While problems cannot be assigned watertight labels, they – in general – concern the following three types – personal relationships; mergers and acquisitions; and commercial/other disputes. While problems based on personal relationships can be navigated without much additional research due to their premises being largely emotional and personal – meaning that they are not tied to a single, specialised subject-matter – the same is not the case with the latter two categories of problems. Along with knowledge of how contractual disputes are resolved and how mergers and acquisitions are undertaken, there is a general cultural understanding of these domains – including the kind of vocabulary that is used in addressing such issues (valuation, divestment, corporate governance, ESG etc.) – that can be obtained only through research.

Research, therefore, has two aims – first, obtaining a sense of the general vocabulary, culture, and context of the problem; and second, obtaining knowledge specific to the problem. The first can be achieved through having a look at news articles and books around your problem’s general theme. If, for example, your problem concerns an acquisition of an emerging AI technology company by an established IT conglomerate, it may be wise to both read news articles on AI, mergers and acquisitions, along with skimming through primers/books containing general ideas on how this works. For the second pursuit of specific knowledge, it would be essential to understand the problem’s underlying pattern – one that is likely to have been replicated in a real-world context. Once you have this pattern with you, do targeted searches till you find real-life scenarios that are akin to your problem, and invoke – depending on context – both the existence of this real-life scenario, as well as the manner in which the issue was approached and resolved in such a scenario.

While a sense of such problem’s real-life resolution would be of help in approaching it overall, it would be most helpful in determining strengths and weaknesses (due to a real-life precedent showing what parties can do), and BATNA/WATNA (helpful in showing that if this negotiation fails – what parties still have in their purses).

### **Thinking and Writing**

Clarity of your overall strategy in the negotiation is essential when making a negotiation plan, and it is advisable to give the problem multiple reads before finalising your stance towards the problem that is consequently reflected in the plan. While some plans have pre-fixed formats that require only strengths/weaknesses, BATNA/WATNA, others let you engage with the problem on your own terms,



making your own format of the plan. In such a situation, it is advisable to write your overall negotiation strategy, and determine how you would approach the negotiation. This is primarily in reference to something called *leverage* (the repetition of the concept is an indication of its importance xD). The problem shows where both parties are *lacking*, what both parties *want*, and what they are willing to *give*. In balancing these considerations, you develop an idea of what can be *given* in order to *take*, and what a reasonable extent of such compromise looks like. The plan, in its strategy section, should say exactly this – the things that a party is willing to give in order to take something else, and the manner in which this giving and taking occurs.

The manner of such giving and taking has been an issue in scholarly studies of negotiation, and has many well-researched models. One model, for example, is such that it encourages early concession – it states that the party conceding first develops a psychological sense of indebtedness to the party to whom a concession is made, inducing them to give you what you want. Now, for this transaction to make sense, the object of your concession must be less valuable to you in comparison with the subject of receipt. In order to incorporate such a strategy, you can, in your strategy section, state that you seek to make early concessions, and also write what you think will be the most likely subject of receipt in consideration of such concession.

Further, in a situation where you have not been offered your CI when making the negotiation plan, it is important to have foresight into possible reasons why the positions provided in the GI have been taken – which, in other words – requires a prediction of the CI of both sides. This is not difficult to achieve, for CI, fundamentally, is a set of incriminating information that offers mutual leverage, which is to be discovered progressively in order to arrive at an agreeable solution. In order to provide interests and predicting BATNA/WATNA, it is useful to undertake such prediction, and offer meaningful reasons for positions that parties have taken.

## **Language**

The negotiation plan is a considerably short document to be verbose. Therefore, from the get go, make sure you are concise and use as many as words as are absolutely necessary to reflect your grasp over the facts and negotiation concepts with respect to a given problem. Before you start drafting your negotiation plan - keep in mind its basic purpose is to convey it to the assessors that you have understood the facts of the problem, you have conceptual clarity about various concepts used in negotiation, and you have

applied these concepts to tackle the problem at hand. Everyone has their own writing style and there is no harm in expressing it in your negotiation plan as long as you are clear in conveying the basic components mentioned above. It is also wise to not throw in words to score additional points without applying them. For instance, while working on the solution, don't merely mention that you will try to amicably settle the dispute using "CNS" (Cooperative Negotiation Strategy) to showcase you have read about negotiation strategies in-depth. If anything, this exercise will cost you a few useful words and not fetch any marks because this is essentially an attempt to deceive the assessor. Instead, go one step further and take another sentence to show how a CNS-based solution will look like.

Keeping it very crisp means that the importance of each word goes up – the tone of the strategy section in your negotiation plan is extremely important, and needs to be suited to the problem. Consider a problem where a company needs to settle a huge fine with a regulator, and the problem mentions that the other party has very strong connections in high places. Tone will matter the most, because you need to ask them to use their connections in the government to get you out of a jam without actually saying it – here, the tone of your sentence needs to convey the intention better than your words do. Tonality becomes especially tricky with the written letter a compared to a spoken one, so you need to carefully think about the possible interpretations of every word and sentence – whatever tone it might possibly convey to the evaluators.

## *Level 4*

### Avoiding Faltu Deductions

#### **Formatting**

Objective deductions can be frustrating, but they are also one area where you can avoid any negative markings on your negotiation plan and significantly improve upon your rank by simply adhering to the prescribed formatting norms. Each written submission, be it before the Supreme Court of India, High Courts, or any other lower court or *fora* has a prescribed format. Same applies for the negotiation plan. There is, *inter alia*, a prescribed font, font size, margin size, line spacing and so forth. Make sure your submission adheres to all these prescribed formats – and one more thing! The Metadata – this denotes the properties of the document which can be used to identify its author and various other details. The reason for deleting these details is to ensure that there is no prejudice caused to participants while assessing the negotiation plans due to any bias on part of the assessor due to the knowledge of assessee's identity.



Please follow the steps indicated on the following links below to remove the metadata from your negotiation plan to avoid the hefty deduction - (for [windows](#) and [mac](#)).

The feedback from negotiation plan assessors in previous years has followed one trend – the teams that have stuck to the basics and the format have always scored the highest. The key to a good plan isn't fancy language or elaborate argumentation – it's a proper format, concise writing, and just the right tone, all within a limited number of words/pages. The focus needs to be on making it neat and presentable. This, by no means, requires tables filled with colours! This does not remove room for creativity – you're free to move things around and try it in a different way, as long as the basics are strongly followed.

## *Level 5*

### Acing It Like a Pro

#### **Quick Tips to Ace Brownie Points**

- Avoid the general tendency to cramp up content if there is a page limit. Make sure there is sufficient line spacing between lines and paras such that it is effortless to read
- Make use of tables for BATNA/WATNA, Positions/Interests, Strengths/Weaknesses - organises content well and saves space.
- If the problem allows, you might want to use graphs and charts as well to better communicate information.
- Demonstrate industry knowledge in your analysis and solutions. Remember that background research is very crucial.
- Don't reiterate facts unless absolutely necessary. Space is very precious.
- Client-Counsel role division: need not be put unless specifically required by the marking scheme.
- Balance creativity and pragmatism.

#### **Feedback from last year's assessors**

Aditya Vardhan Sharma (a.k.a "Bond")

- A lot of what happens in negotiations and negotiation plans is ticking the boxes. It stands to reason that if you do not include, say, your BATNA in the plan, you won't fetch any points for it.



- A lot of teams failed to make the distinction between position and interest.
- A good plan would indicate how RADPAC or dual-concern or any other method would be employed. It is insufficient to merely throw jargon in.

Tarun Singh Rathore

- Teams that did well stuck to the basics and tried to stay true to the assessment criteria given by the ADR Board.
- Crisp and clean format is always better than a haphazard one (this is where a table can come in handy).