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GETTING THE DEAL DONE

FREE REPORT

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Set the Table

Many professionals have a knack for creating value, claiming value, and building great deals. Yet few are capable of helping others enhance their negotiation performance. Some offer weak advice that they themselves wouldn't follow. Many are oblivious to the qualities that make them effective negotiators. Yet an effective coach can be an invaluable asset, and such individuals most likely exist within your organization.

What makes someone a good coach?

Rather than simply telling you what to do in a particular situation, effective coaches focus on improving your skills. They are well versed in an explicit theory of negotiation (such as the mutual-gains approach taught at the Program on Negotiation at Harvard Law School) that allows them to explain and predict what will and won't work. Effective negotiation coaches help you set goals, assist you in figuring out what techniques to try and what adjustments to make, and enable you to understand what happened after the fact.

In particular, effective coaches:

- Help you set your own goals rather than telling you what your goals should be.
- Encourage you to try new tactics and take risks.
- Offer support while leading you to confront what went wrong and why.
- Ask questions that enable you to figure out what you can learn from an experience.
- Model advice in their own practice.

- Honestly and humbly share their own negotiation experiences, positive and negative.

By Lawrence Susskind, Professor, Massachusetts Institute of Technology.
Adapted from "Finding a Good Negotiation Coach."
First published in the August 2007 issue of *Negotiation Briefings*.

According to most negotiation experts, thorough preparation is the key to successful bargaining. The more you know about yourself and your counterpart, the more control you'll have during the negotiation process. Yet there's a significant impediment to this preparation process: *egocentrism*, or the tendency to have an overly positive view of our abilities and our future. Two-thirds of our MBA students, for example, typically think their decision-making abilities rank above the class average.

Imagine that in four weeks, you'll be bargaining with someone who you've heard is very competitive. Will you give in to this negotiator's demands or match her fierceness? In our studies with Ann Tenbrunsel of the University of Notre Dame, we found that MBA students planned to go toe-to-toe with a competitive opponent. Yet when the time came to negotiate, these students became concessionary, agreeing to unfavorable outcomes. From the distance of time, these negotiators predicted they would be lions that roar, but they became whimpering mice in the heat of the moment.

Although forecasting errors are extremely common, you can minimize their impact on your negotiations by following these three guidelines.

1. Consider the opposite. One effective strategy for debiasing your judgment is to "consider the opposite" of what you think is true, as Charles Lord of Texas Christian University advises. Don't assume you'll maintain your poise when a negotiation gets tough. Instead, consider your strengths and your weaknesses, and create an effective action plan. Furthermore, think about all the motivations you're likely to experience in the negotiation. In our research with Sillito and Tenbrunsel, self-predictions became more accurate when we asked people to consider their key motivations in an upcoming negotiation. Thinking about motivations helps you better evaluate potential outcomes and identify effective strategies.

2. Remove your opponent's personality from the equation. When preparing to negotiate, you should consider the other side's sources of power and walk-away alternatives, but you shouldn't give much weight to your assessments of his personality or to stereotypes.

Why not? In part, because our expectations of others are often dead wrong. Laura Kray of the University of California at Berkeley has shown that women are typically just as effective negotiators as men, although people often fall victim to common stereotypes and expect women to be less effective.

To avoid overweighting personality or stereotypes, consider the opposite during your negotiation planning. "How should I behave if he isn't cooperative?" you might ask yourself, or "How would I behave if he were a woman?" Your answers can lead you to strategies that will apply to a variety of people and situations, such as identifying ways to discover your opponent's best alternative to a negotiated agreement, or BATNA. If you ask the right questions, your tactics will be driven by the other side's actual behavior rather than by your faulty assumptions.

3. Align your behavior with your forecasts. In general, our egocentric selfpredictions cause us to overestimate our power at the bargaining table. But research by Gerben Van Kleef of the University of Amsterdam suggests that the powerful are more immune to competitive opponents than those who wield less power; the behavior of the powerful tends to resemble their forecasts. Thus, one way to improve your forecasts is to increase your bargaining power. This could mean generating better alternatives or highlighting your status and expertise.

By Kristina A. Diekmann and Adam D. Galinsky.
Adapted from "Overconfident, Underprepared: Why You May Not Be Ready to Negotiate."
First published in the October 2006 issue of *Negotiation Briefings*.

When talks stall, it's tempting to jump to conclusions: "It's purely a price gap." "They're being unreasonable." "We're not communicating well." "We're in a weak position." Instead of focusing on the first explanation that leaps to mind, you should diagnose the key barriers to agreement; this will then allow you to devise the most promising approach to overcoming them.

In an approach that we call "3-D Negotiation," David Lax and I have classified tactics and interpersonal interaction "at the table" as the first dimension of deal making. The process of diagnosing and overcoming barriers to agreement extends into two other dimensions: deal design, the art and science of crafting arrangements that unlock value for all parties, and setup "away from the table," in which the right people are lined up in the right sequence to address the right issues at the right time.

With a thorough 3-D audit of the barriers that stand between you and your desired deal, you can consciously craft strategies to overcome them. Before a negotiation and when talk stalls, take time to answer the following three questions, which correspond to our three dimensions:

1. Are the barriers to agreement tactical and/or interpersonal? When you see strong potential for a mutually beneficial deal, yet you can't seem to get there from here, common interpersonal or tactical barriers may be holding you back. These include poor communication, lack of trust, crosscultural clashes, and hardball tactics. Robert Moses, the famous parks commissioner of New York and Long Island, was known to browbeat and threaten during negotiations, yet would often back down when his counterpart responded in kind rather than staying silent or appearing fearful. Keep in mind, of course, that some people who escalate are better left unchallenged until they've let off steam, and become more open to reason.

2. Do the barriers result from poor deal design? A barrier can arise when one or both sides are dissatisfied with the agreement on the table. A poor deal may fail to maximize the potential "value pie" or fail to accomplish the parties' objectives, or it can offer insufficient value relative to parties' aspirations or walkaway options, or both. For example, a tug-of-war between a software firm and a customer over the price of a suite of products may have no solution; the proposed price may always be too high or too low for one of the players. But including a bundle of software, customization, and training at a higher price might break the impasse.

3. Do the barriers result from a flawed setup? A flawed setup can indicate problems with the negotiation's scope, sequence, or process choices. Scope flaws

could mean you're dealing with the wrong parties, interests, issues, or no-deal options; for example, you may face an agent whose incentives diverge from those of his client. Sequence flaws entail problems with the order in which you approach parties or deal with issues. Process-choice flaws suggest that a negotiation is poorly organized; parties may have overlooked the potential benefits of joint fact finding or mediation. For example, frozen negotiations between Microsoft and the U.S. Department of Justice finally broke through with the help of intensive mediation efforts by outside parties.

By James K. Sebenius.
Adapted from "Do a 3-D Audit of Barriers to Agreement."
First published in the February 2006 issue of *Negotiation Briefings*.

Manage Interpersonal Dynamics

Few negotiators would argue against the value of good listening skills. Skillful active listening can calm tensions, break impasse, and get you the information you need to build creative deals. Yet most people overestimate their ability to deploy this key skill, while also lacking an accurate understanding of the concept of active listening.

Contrary to popular belief, active listening doesn't mean sitting patiently while your counterpart talks. Nor does it simply entail saying "I understand" or establishing good eye contact. Rather, active listening is a dynamic process that can be broken down into three different behaviors: paraphrasing, inquiry, and acknowledgment.

1. Paraphrase. Paraphrasing means restating what you heard your counterpart say—without expressing agreement. The goal is to reflect back the speaker's key points as accurately and completely as possible. Be careful not to reframe her statements in terms more palatable to your position or to select the points you want to discuss and ignore the rest.

In negotiation, effective paraphrasing brings several benefits. First, it helps you track the other side's arguments and interests. Second, it gives your counterpart an opportunity to clarify her message, thereby reducing the likelihood of later misunderstandings. Finally, accurate paraphrasing conveys that

you understand her point of view.

2. Inquire. Active listeners test their understanding of the other side's point of view by asking open-ended questions—ones that require elaboration rather than a simple yes or no. Inquiry challenges your counterpart to unveil the reasoning behind his positions, demands, and conclusions. It can also bridge the gap when your counterpart's assertions seem confusing, illogical, or inconsistent with his behavior away from the table.

3. Acknowledge. Perhaps the most difficult active-listening skill to deploy, acknowledgment requires you to listen for the feelings underlying your counterpart's message and then reflect them back to convey understanding. Beyond paraphrasing what someone has said, you must acknowledge what he is not saying.

Suppose you say to a dissatisfied customer, "It sounds like you're feeling frustrated and disappointed with our service." She's likely to respond: "Frustrated? We're absolutely furious!" Typically, such initial bursts of displeasure are followed by a noticeable decrease in emotional arousal. When unacknowledged during a negotiation, negative feelings such as anger and frustration tend to leak out in unproductive ways: as passive-aggressive behaviors, constant complaints, gossip, and undermining. By bringing pent-up emotions to the surface, acknowledgment steers negotiators toward more reasonable problem solving.

By Robert C. Bordone.
Adapted from "Listen Up! Your Talks May Depend on It."
First published in the May 2007 issue of *Negotiation Briefings*.

Reasonable, fair-minded negotiators often find themselves accusing others of unethical behavior or facing such accusations themselves. Either way, the negotiation may head down a path that leads to impasse and destroys the relationship.

To fully understand the constraints on your own negotiating ability, you need to overcome the common assumption that ethically challenged behavior always results from a conscious decision to engage in self-rewarding behavior. Once you understand that unethical behavior can be unintentional, you are freed to identify

ways in which your behavior is inconsistent with your ethics. This mindset also allows you to better understand the behavior of your negotiation counterparts and to strengthen your relationship with them.

Implicit stereotypes. A striking finding to emerge from our research is the disparity between most people's conscious and unconscious prejudices. This fact can be difficult to reconcile, especially when you uncover attitudes within yourself that you find objectionable, even morally reprehensible. Yet implicit stereotypes may be sabotaging your efforts at impartiality. Specifically, we unconsciously use subjective standards to judge individuals by the qualities we believe to be true of the groups to which they belong.

Imagine that a purchasing manager is working to increase contracts with women-owned vendors. This policy makes good business sense, he believes, and it's important to give opportunities to such firms. In a contract negotiation with the CEO of one such vendor, the purchasing manager finds her questions to be a bit aggressive and is disappointed when she doesn't laugh at his jokes. On all objective measures, the woman's company is the best for the job, but the manager chooses another vendor based on the CEO's personality.

Automatically and without awareness, the purchasing manager compared the vendor's assertiveness to that of other women rather than to a more universal standard. As a result, he exaggerated her assertiveness without recognizing his mistake. Likewise, a man who seems less assertive than other men may also be harmed by such implicit stereotypes.

Conflicts of interest. A salesperson has just given you his pitch, and you've asked him whether he works on commission. "Sure," he says, "I'll be rewarded if you buy our product. But I honestly can say that I would not try to sell it to you if I didn't believe that it was the best product available to meet your company's objectives."

In many professions, conflicts of interest exist between obligations and perks. Doctors recommend drugs after being wined and dined by pharmaceutical companies. Accountants serve as consultants for the same firms whose books they audit. Real-estate agents receive a percentage of a home's sale price, and many lawyers live by the billable hour.

It would be unfair to indict all these professions for unethical behavior. Yet conflicts of interest between what personally benefits a negotiator and the claim she might make to others can cause real damage. Research shows that professionals routinely—and unintentionally—can convince themselves that their product or service is the very best option for a client, even when, objectively, this is not the case.

By Max H. Bazerman, Dolly Chugh, and Mahazarin Banaj.
Adapted from "When Good People (Seem to) Negotiate in Bad Faith."
First published in the October 2005 issue of *Negotiation Briefings*.

IN NEGOTIATION, sometimes you just don't have much to give. If your department's budget has been slashed, your subordinates will have to settle for smaller raises than usual. When consumer demand for your red-hot product levels off, your vendors will have to get used to smaller orders.

In the business world, an unsatisfied counterpart might fail to honor your agreement, avoid working with you again, or even sabotage your reputation. You can reduce the likelihood of such negative reactions by attending to your counterpart's subjective experience of the negotiation. The following strategies can help you enhance the other side's satisfaction even when resources are scarce:

Adjust expectations. Try to adjust your counterpart's expectations before talks begin. Employees are more likely to be satisfied with a small cost-of-living raise if you've communicated in advance that the company has had a difficult year.

Use persuasion tools. In their book Negotiation Genius (Bantam, 2007), Deepak Malhotra and Max H. Bazerman describe persuasion techniques that you can use to enhance the other side's satisfaction. For instance, dole out concessions, rewards, and good news in stages rather than all at once. Research by the late Amos Tversky and Nobel Laureate Daniel Kahneman shows that people prefer to experience several "wins" rather than one, even when the total amount gained is the same. And, to prevent your counterpart from viewing himself as a serial "loser," deliver burdens, costs, and bad news in one big chunk.

Don't gloat. When we negotiate, we quite naturally compare our outcomes to those of our opponents. Internal comparisons that occur within a negotiation

affect our satisfaction with the experience. If a counterpart appears satisfied, that's enough to make many negotiators suspect that they got a bad deal. Therefore, you'd be wise to be modest about your gains and express your admiration for your counterpart's achievements.

Articulate your logic. Research by Nathan Novemsky of the Yale School of Management and Maurice Schweitzer of the University of Pennsylvania's Wharton School shows that external comparisons—those we make with people outside a negotiation—affect satisfaction even more than internal comparisons.

This makes sense when you consider that it's easier for a buyer to compare her outcomes with those of other buyers than to the seller's outcomes. So if you're scaling back a vendor's contract due to reduced product demand, tell him about similar cutbacks that you're making with his competitors.

Apologize when appropriate. If you have little to give or burdens to impose, accompany the bad news with an expression of regret. A heartfelt apology can go far toward building trust and satisfaction, Schweitzer writes in the December 2006 issue of *Negotiation*. Acknowledging your counterpart's difficulties is a much better strategy than ignoring them.

By the Editors, *Negotiation Briefings*.
Adapted from "Make Them More Satisfied with Less."
First published in the November 2007 issue of *Negotiation Briefings*.

Weigh Offers, and Create Value

When it comes to negotiation, the more choices on the table, the better your outcomes will be—right? Not necessarily. An excess of options can stand in the way of efficient agreements and, moreover, prevent you from being satisfied with the final result.

In his book *The Paradox of Choice: Why More Is Less* (HarperCollins, 2004), Swarthmore College professor Barry Schwartz argues that, paradoxically, the myriad choices pervading modern life—where to live, what career to pursue, even whom to marry—have made us less happy overall rather than more so.

Why can it be so difficult to make a pleasing choice? In negotiation, as in life, our choices are accompanied by *opportunity costs*; one choice made is another

choice forgone. The many options that confront us at the bargaining table, Schwartz argues, can lead us to agonize too long about which one to choose—and then later to regret the choices we have passed up. The following guidelines can help you commit to focusing your negotiations on the choices that truly matter:

1. Review past decisions and prepare for future ones. Reflect on a recent, important negotiation. How did you choose among multiple options? How did your choice turn out? Did you spend too much time weighing issues that ultimately didn't matter, or did you stay focused on your goal?

You can avoid vacillation and regret by carefully thinking through your choices before talks begin. What will happen if you make a certain choice, and what won't happen if you make that choice? Also consider your best alternative to a negotiated agreement, or BATNA. If you don't make the deal, buy the house, or form the partnership, what will you have left? A strong alternative will enable you to make tough choices—and to walk away if those choices aren't good enough.

2. Avoid making social comparisons. It's tempting to compare your choices and outcomes to those of people around you. But does it matter if another executive earns slightly more than you do, or if another company is expanding more quickly? Focus on what makes you happy and your company successful and then decide which battles to fight—and which aren't worth the effort.

3. Cultivate an "attitude of gratitude." According to Schwartz,"Gratitude does not come naturally to us most of the time." Yet feeling a sense of gratitude and expressing appreciation can foster empathetic listening on both sides, establish a trusting relationship, and ultimately generate productive and satisfying outcomes. Rather than obsessing about the deal that got away or an appealing choice that you passed up, consider "how much better things are than they might be."

By Susan Hackley.
Adapted from "Focus Your Negotiations on What Really Matters."
First published in the September 2006 issue of *Negotiation Briefings*.

Reciprocation tactics are tried and true. Politicians "logroll," or swap votes, on pet projects, companies offer free product samples to consumers, and charitable organizations include small gifts when soliciting donations. According to the *norm of reciprocity*, if you're nice to me, I'll be nice in return, and vice versa.

In the realm of negotiation, there are many benefits to be gained from including reciprocation strategies in your toolbox. Reciprocity can be much simpler and cheaper than formal contract enforcement mechanisms such as litigation. In many situations, negotiators learn to trust each other through reciprocity, which obligates trustworthiness in return. Here are three guidelines for delivering an act of generosity that will be welcomed and returned.

1. Clearly establish the parties involved in the exchange. Usually it will be perfectly clear who you are trying to draw into a reciprocal exchange: the person sitting on the other side of the table. But if your counterpart is negotiating on behalf of someone else, you need to know whether the spokesperson is empowered to return acts of kindness. This can be particularly tricky if you're negotiating with someone's agent. Because an agent typically is already engaged in a reciprocal exchange with the client, he may be reluctant to agree to accept acts of generosity from you.

2. Make sure your behavior cannot be attributed to ignorance or chance. The best invitations to reciprocate are intentional acts of true generosity that unambiguously signal kindness. After all, accidental generosity does not predict return acts of goodwill. Therefore, when preparing to invite reciprocation, research your potential offer thoroughly before you meet at the bargaining table. Let your counterpart know that you are well informed and that your offer is intentional. If you decide to make a generous offer to a potential employee in a salary negotiation, make sure that she understands your reasons for doing so.

3. Make your counterpart feel indebted. Only a meaningful favor induces kindness in return. Because reciprocal concessions are so prevalent in negotiation, initial offers and demands are all the more crucial, anchoring your expectations and those of your counterpart. An initial offer that is close to your BATNA—your

best alternative to a negotiated agreement—gives you little room to adjust and engage in reciprocal exchange. To signal your willingness to cooperate, consider making a relatively significant gift or concession in the early stages of talks—but don't budge if your counterpart fails to return the favor. Instead, continue with a reasonable request that exceeds your true goal, adjusting downward gradually. The ideal concession causes you little harm but provides the other side with valuable benefits.

By Iris Bohnet.
Adapted from "Did You Give at the Office? Leveraging the Power of Reciprocity."
First published in the July 2005 issue of *Negotiation Briefings*.

CONSIDER WHAT HAPPENED when two professors in the same department both desired a spacious office that recently had been vacated. Their relationship grew strained—until they made some inquiries and discovered that funds were available for office expansion and renovations. Now there was the possibility for more than one nice office. After checking into the availability of those funds, they were able to expand the pie.

By striving to appreciate the other party's point of view, Deborah M. Kolb (one of the authors of this article) and her colleague, writer Judith Williams, have noted, you can use appreciative moves to expand and modify how resources are distributed, sometimes without the need to explicitly discuss underlying interests. Here are two types of moves you can use to get more of what you want.

1. Reframe the issue. The concept of modifying and expanding resources may seem obvious, but negotiators often fail to look for more pie to slice. When you reframe the issue in question, often you'll uncover unexpected resources.

That's what happened when a hospital's vice president (VP) of nursing negotiated her severance package. The hospital's downsizing initiative presented the VP with an opportunity to quit and embark on a career change, but she needed money to support that goal. She offered to resign in return for a lump sum payment that would cover a year's expenses while she returned to school for an MBA. Seeking a compromise, the hospital's negotiator offered half the amount she proposed.

The VP realized she could not extract more simply by asking for more. Instead, she proposed that they pay her half the amount she originally requested in a lump sum severance and the other half as tuition reimbursement—a benefit she would have received anyway if she remained on the job. By appreciating her counterpart's position, the VP was able to reframe the issue of severance so both she and the hospital achieved their goals.

2. Learn about the context. You also can discover opportunities to modify or expand the resource pool by learning more about the context of the negotiation. By educating yourself about the limits your counterpart may be facing, you may be able to modify his position—as well as the pool of resources.

As an example, a partner in a consulting firm needed to collect fees from a client to cover a cost overrun incurred by a major one-year inventory control project. The overrun occurred because the client had failed to provide the in-kind support that had been the basis for the contract. Insisting that her company owed only the contract fee, the client refused to budge.

The consultant tried to find out more about the dispute's context. He learned from other sources that the client had reached her budget limit for the year and that exceeding her budget could result in career-damaging feedback within the company.

Once he understood the context, the consultant was able to propose a mutually beneficial solution: "Let's extend our contract for another year. We'll pledge to complete the project this current year but bill you for it next year, when the contract expires." In return, the client agreed to give the consultant any follow-up work resulting from the project. Expanding the contract's time horizon enabled both sides to achieve their objectives.

By Deborah M. Kolb and Peter J. Carnevale.
Adapted from "When Dividing the Pie, Smart Negotiators Get Creative."
First published in the January 2007 issue of *Negotiation Briefings*.

Close and Implement the Deal

You've followed the negotiation guidebooks to a tee, uncovered the parties' key interests, brainstormed creative solutions, and even developed good

rapport with your counterpart. You've done everything right … but you still don't have agreement. The following rules of thumb can help you close the deal.

1. Diagnose the barrier. If you think strategic behavior—the unwillingness of one or both sides to make a best offer—may be the problem, enlist a trusted, unbiased third party for help. The negotiators can then disclose their respective bottom lines privately to the "neutral," who will tell them if there's an overlap. If so, the negotiators should be able to hammer out a deal quickly within the zone of agreement. If not, it may be wise to abandon talks and pursue other alternatives.

Psychological factors can block agreement, too. Professor Lee Ross of Stanford University demonstrated the all-too-human tendency to reactively devalue what other people offer us. "If that were truly important to them," we tell ourselves, "they wouldn't have made that concession." We need to avoid that reaction and be careful not to trigger it from others. Rather than trying to wrap things up by putting a reasonable number on the table, for instance, wait for the other side to make a specific request. In this manner, you may increase the perceived value of your concession—and your counterpart's satisfaction.

2. Use the clock. We may not like to make important decisions under the gun, but deadlines can provide a healthy incentive to come to agreement. It's no accident that lawsuits settle on the courthouse steps and that strikes often are averted at the eleventh hour. Only when the judge is about to be seated or the contract is due to expire are people jolted out of the comfort of the status quo. If you anticipate these moments, recognize your priorities, and keep channels of communication clear, you'll be able to move quickly and wisely when you have to.

To avoid getting bogged down in never-ending talks, it pays to impose a deadline at the outset of negotiation. You also can put a fuse on the proposals you make, though exploding offers can backfire if the other party resents being put under artificial pressure.

3. Count your change. Even if you've done everything right, you have to be alert for gambits and tricks as the negotiation winds down. A classic bargaining tactic among lawyers advises, "After agreement has been reached, have your client reject it and raise his demands."

To avoid such ploys, when you reach agreement, confirm that all the key provisions have been covered so there will be no surprises. Even after you've

gotten a sincere handshake, your counterpart may come back with further demands if she is having a tough time selling the deal internally. Of course, it's impossible to know when you're being taken for a ride and when the need for revisions is legitimate. But you should be leery about making any unreciprocated concessions. If your counterpart asks for new terms, even if you can afford them, you should get a favorable adjustment in return. Otherwise, you're simply encouraging further requests.

By Michael Wheeler.
Adapted from "Closing the Deal."
First published in the April 2006 issue of *Negotiation Briefings*.

EXECUTIVES TYPICALLY LEAVE THE LEGAL ISSUES surrounding their deals to their attorneys. While this division of labor is often appropriate, negotiators can run into trouble without an awareness of the governing legal rules. Key "rules of the road" include the mirror-image rule, offer revocation, negotiator authority, negotiator intention, and the consideration requirement. To ensure that your deals don't later collapse on technical grounds, you need to be aware of these principles throughout the negotiation process.

Negotiator intention

What happens when it appears that parties have reached a deal, but one party believes he didn't? Rather than trying to discern negotiators' innermost thoughts, most courts have adopted the objective theory of assent, which requires an examination of only the outward manifestations of conduct.

Imagine that two farmers, Gordon and Hank, meet for a drink at a local bar and begin negotiating the sale of some of Hank's cattle to Gordon. After a bit of haggling, they agree on a price. Hank documents the terms on a napkin; they both sign it to seal the deal. The next day, Gordon appears at Hank's door to pay for and collect the cattle. Hank claims the deal was just for fun and refuses to accept payment. Does Gordon, armed with the napkin, have a legally binding claim?

Because Hank signed a document that memorializes the sale, even if written spontaneously on a napkin, most courts would find that Hank sold his cattle to Gordon, fair and square.

In their classic negotiation text *Getting to Yes*, Roger Fisher, William Ury, and Bruce Patton offer the useful metaphor of "going to the balcony" as a way of assessing how a third party might view your negotiation: "step back, collect your wits, and see the situation objectively." Hank would have been well advised to go to the balcony when negotiating cattle at the bar with Gordon. Even if your own intention seems crystal clear, and you're certain that no deal has been struck, it's crucial to make sure that your counterpart understands this as well.

In the business world, complex deals are negotiated over the course of weeks and months, with parties gradually reaching closure on various issues. At a certain point, parties enter a legally binding contract—or, in contract terms, they indicate their intent to be bound. After the fact, the courts will look at the concreteness of the deal's terms and, conversely, the extent to which important issues are still unresolved, to determine whether the parties intended to be bound.

By Guhan Subramanian.
Adapted from "Contracts 101: What Every Negotiator Should Know About Contract and Agency Law."
First published in the February 2006 issue of *Negotiation Briefings*.

THROUGHOUT MY 20 YEARS of training and advising executives involved in longterm transactions, I've heard this message again and again: "Once the contract is signed, we put it in a drawer. After that, what matters most is the relationship, and we're negotiating it all the time." Whether you're manufacturing audio components in China, providing data-processing services in Chicago, or constructing a cement plant in Cheyenne, Wyo., the quality of your relationship with a contractual partner is often the difference between a successful deal and one that falls apart. Here are some tips for turning contracts into relationships that work.

1. Start forming a relationship before you sign the contract. While negotiators must necessarily be concerned about a deal's contractual provisions, they should also lay a solid foundation for a business relationship from the very start of talks. Effective relationship negotiators focus on a variety of non-contractual issues, including:

- Getting to know the other side well.
- Establishing a positive personal chemistry between the leadership of the companies involved.
- Understanding and respecting each other's cultures, expectations, and goals.
- Putting mechanisms in place to foster communications after the contract is signed.
- Ensuring that the proposed deal is balanced and advantageous for both sides.
- Identifying and planning for potential obstacles to implementation.

You might also consider hiring a consultant to develop and guide a program of relationship-building activities that could include joint workshops, get-acquainted sessions, and retreats for executives from both sides.

2. Select the right people to manage the relationship. Launching a business relationship requires diplomacy as well as technical expertise. To lay a solid foundation for the relationship, each side should select people with the appropriate interpersonal skills, knowledge, and sensitivity. Indeed, these qualities may be more important in the long run than technical knowledge. Just as diplomats must be vetted by the receiving state, parties to alliances might agree that executives appointed to manage the relationship should receive the approval of the other side.

3. Closely involve negotiators in implementation. Too often, companies signing a long-term contract assume that a solid working relationship will develop automatically. For example, General Motors negotiated a series of joint ventures that ran into trouble once GM and its international partners began working together.

Why? Because the teams that negotiated the deal were not involved in implementing it. After GM negotiators formed a joint venture, they'd move on to the next deal, leaving other executives with the task of figuring out how to make it work. Within the company, this became known as "throwing it over the wall"—that is, negotiating a deal and leaving it to others to make it work.

During negotiations, both sides gain an enormous amount of information about each other and the deal. In the process, they may very well form a positive relationship. To mobilize these valuable assets, the negotiators themselves should

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