

Compass Chambers



Lessons from Lockdown:-

*negotiating in a world which
suddenly became more remote*

Steve Laing

What is negotiation? A definition

*A communication process
between individuals*

*that is intended
to reach a compromise or agreement
to the satisfaction of both parties*

A communication process between individuals can be...

- in writing (email, letter)
- vocally only (phone)
- digitally (video-conference)
- ~~in person (face-to-face)~~

Effectiveness??

least?

most?



.....intended to reach a compromise or
agreement
to the satisfaction of both parties

Must be some perceived conflict

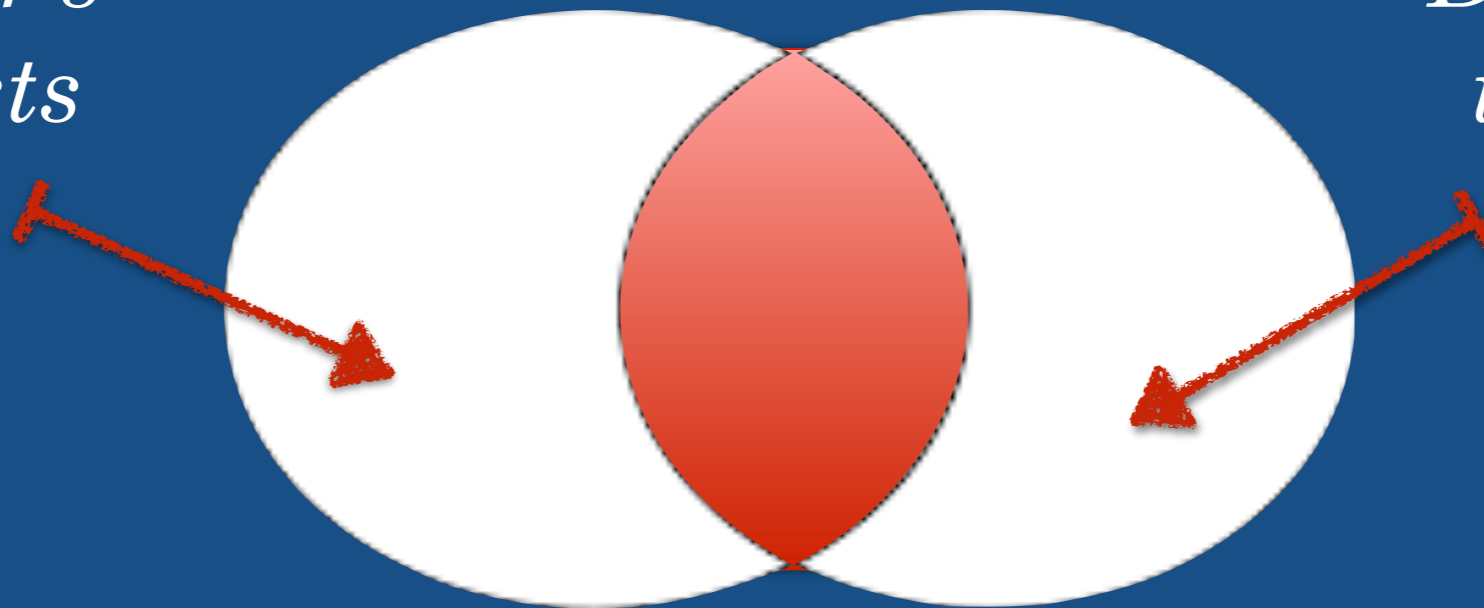
Question of the interests of parties

- some interests may be shared;
- other interests may be in conflict.

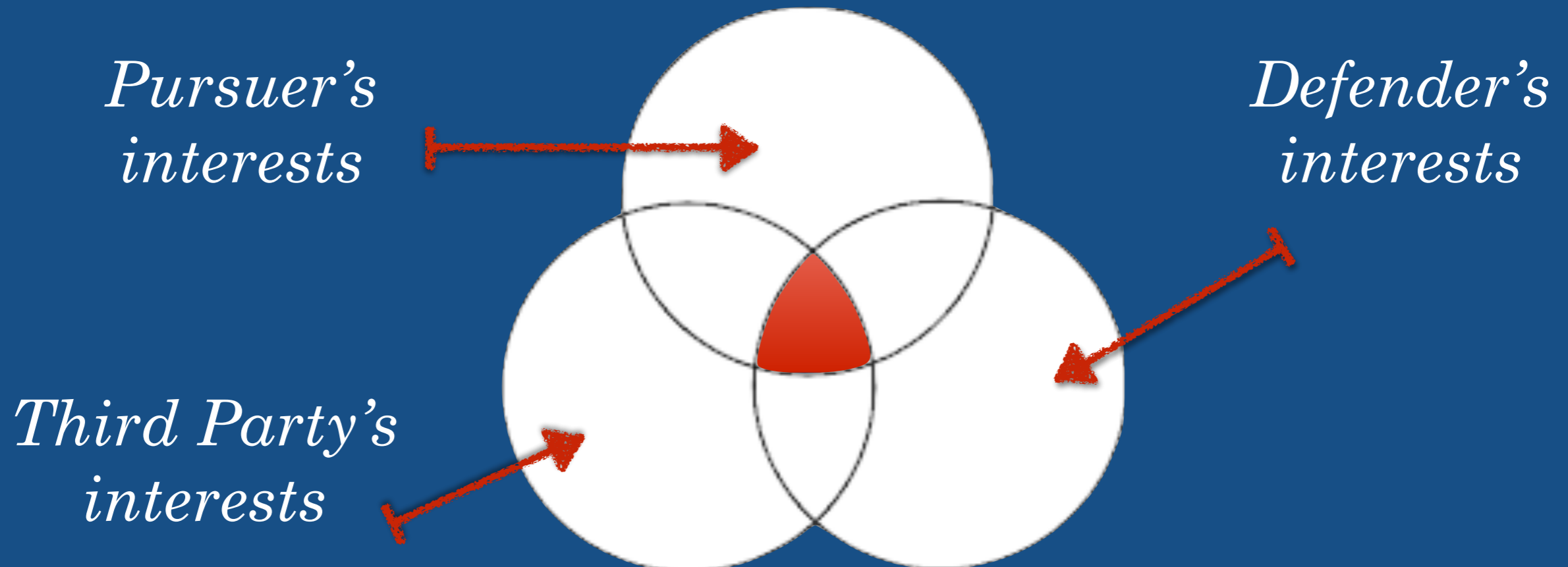
.....intended to reach a compromise or agreement
to the satisfaction of both parties

Pursuer's interests

Defender's interests



.....intended to reach a compromise or agreement
to the satisfaction of both ~~all~~ parties



Not a formulaic procedure where you inevitably end up 'meeting in the middle'

- May be a 'comfort' in heading with a 'momentum/rhythm' towards a mid-point
- But is it in your client's best interests?
- Too comfortable for opponent too? Going where they want you to go?

Not done in a vacuum

Agreement reached in context of
strengths and weaknesses of each side's case,
bearing in mind each side's BATNA

Best
Alternative
To a
Negotiated
Agreement



BATNA

What you do if you don't reach a deal with
your opponent

Proceeding to court to
determine the conflict
between the parties

whether by motion, debate,
proof, trial, appeal

Process of evaluation -
What are the strengths and weaknesses of
each side's BATNA?

Will determine
the least you will accept
(if Pursuer)
or
the most you will pay/concede
(if Defender)

A detailed knowledge of your case is essential

- enables you to persuade your opponent of your side's strengths
- enables you to anticipate arguments as to weaknesses of your case
- be prepared to counter such arguments
- find out answers to questions before they are asked

Strength of BATNA?

Not just the prospects of success on paper
and likely value of case

- *willingness of each party to go into court and their motivation?*
- *timing of court case - how long before proof?*
- *procedural position - eg late witnesses, amendment*
- *availability of witnesses*

Conflict management - 5 distinct behaviours

Assertiveness



Cooperativeness