

The Art of Negotiation:

Techniques for getting
the right deal done.....

.....without being had!!!

Steve Laing, Advocate



Compass Chambers

Negotiations form part of everyday life for us all:-

- professionally
 - with opponents, colleagues and clients
- domestically and socially
 - with your “other half”, your children and friends

It is something that comes naturally to us all.

We may do it unquestionably.

We've done it most of our lives.

1. Debunk some myths about negotiations
2. What is negotiation?
3. How do you present as a negotiator?
4. Analysing your opponent and their case
5. Other negotiating considerations and techniques

1. “Good negotiators are born. It comes naturally. You cannot learn it”

- Its about techniques.
- Evaluating what worked and what didn't work.
- Learn from experiences.

2. “Good negotiators are aggressive risk-takers.”

- Aggressive risk takers rely on luck
- Win big but equally can lose big
- Use intuition but its about calculated risks

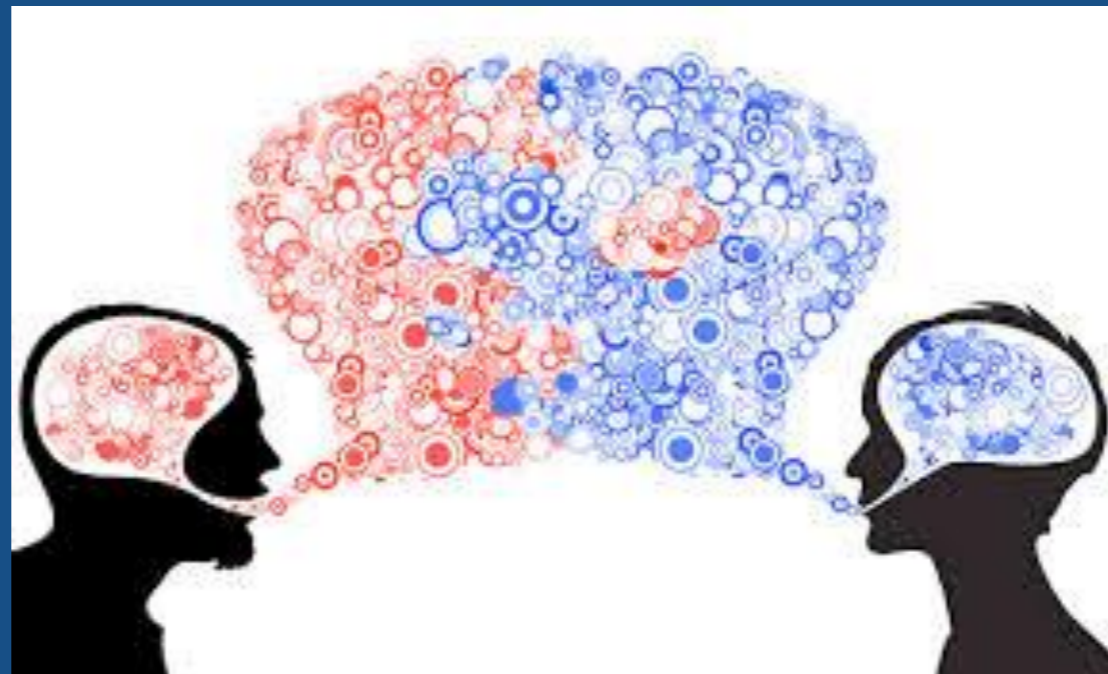
Debunk some myths

3. Negotiation is a 'game' where you follow the 'rules'. Its a formulaic procedure where you end up 'meeting in the middle'

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

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...

Communication process can be:-

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

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

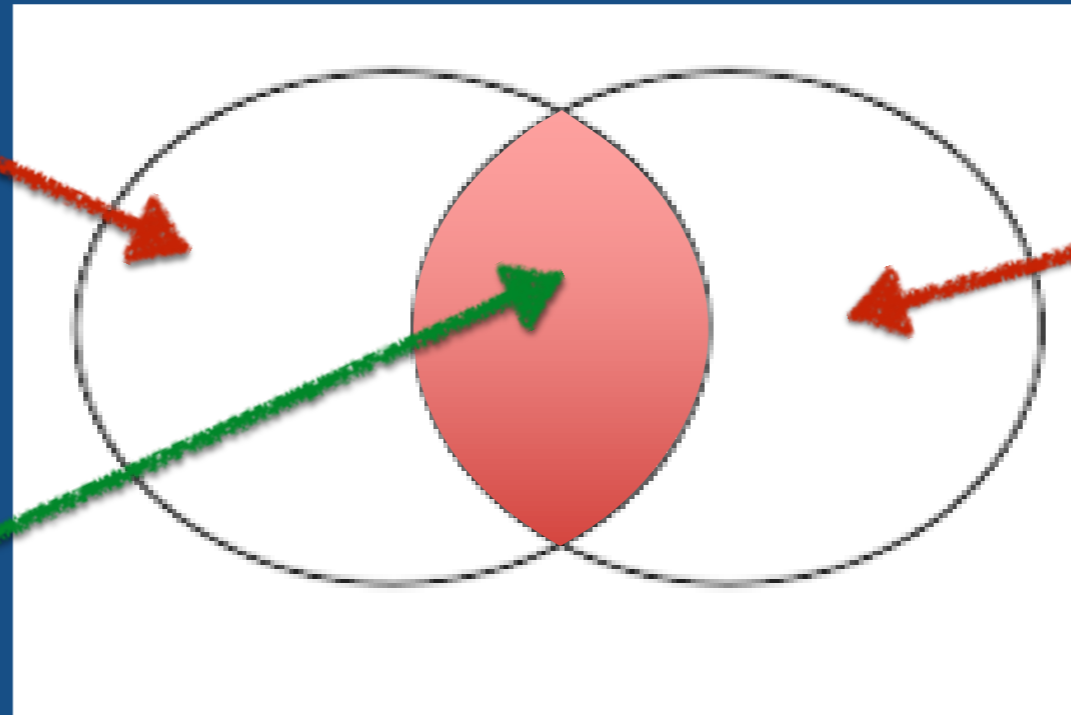
there must be some perceived conflict

question of interests of parties

some interests may be shared; others are opposed

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

Pursuer's
interests



Defender's
interests

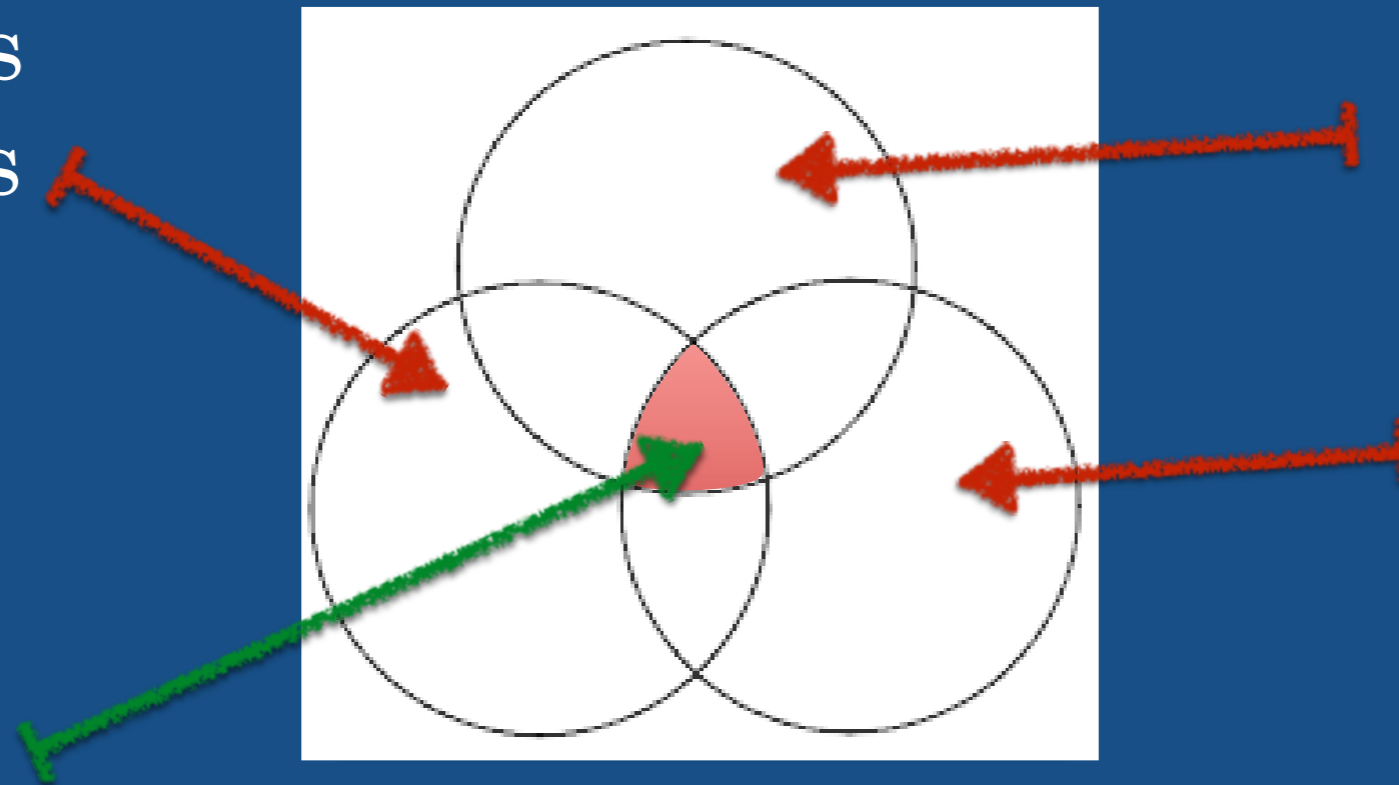
Area of
compromise
to satisfaction
of both

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

Pursuer's
interests

Defender's
interests

Third
party's
interests



Area of
compromise
to satisfaction
of all

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

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

What you do if you dont reach a deal with your
opponent

What are the available alternatives to you?

What are the available alternatives to your opponent?

What are the strengths and weaknesses of each
party's BATNA?

BATNA

Proceeding to court
for determination of the conflict between the parties
whether by motion, debate, proof, appeal.....
at which point one party will lose

BATNA

Will determine least you will accept (if Pursuer/seller)
or most you will pay (if Defender/buyer)

Power to walk away

BATNA

Not just the likely monetary outcome for each party

Other factors, such as:-

- willingness of each party to go into court?
- timing of court case - how long before proof?
- procedural position - eg late witnesses, amendment, motion to discharge
- availability of witnesses
- Pursuer's need for money - "Christmas offers"

Balancing risks of each party

How do you present as a negotiator?

Negotiation is a mixture of

competing

and

cooperating



Whatever your negotiating style, two important factors will influence outcome.....

1. Your own personal credibility and reliability

2. Your knowledge of your client's case

1. Your own personal credibility and reliability

Affects:-

- your persuasiveness
- your opponent's perception of your sincerity
- how much your opponent will rely on your assertions

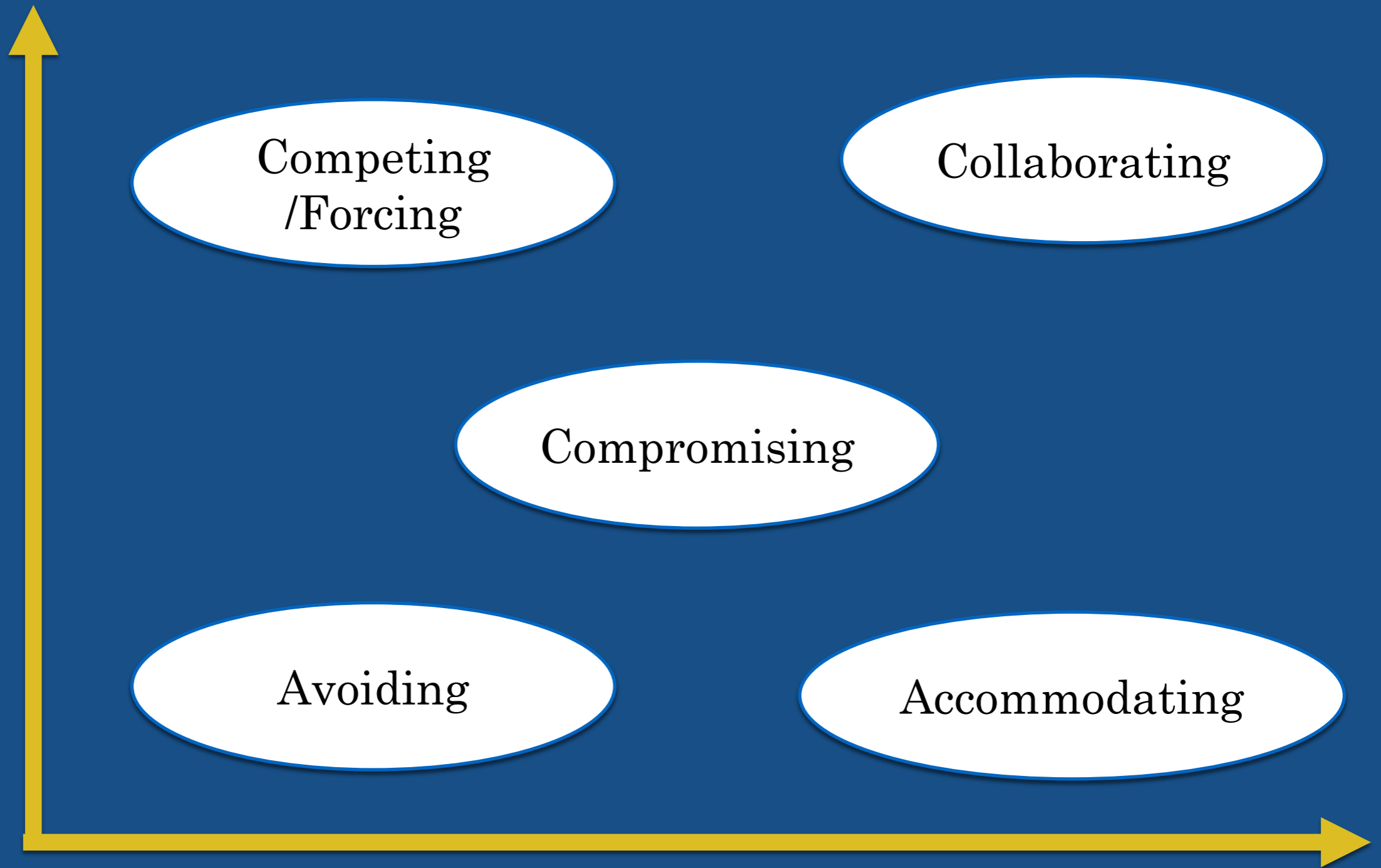
Don't undermine your personal integrity

- Battles compared to wars

Don't try to be something that you're not

- If you're not a bad cop, dont try to be one

Assertiveness



Cooperativeness



Despite being yourself,
like 007,
keep a “poker face”
to your opponent
throughout the process

Despite being yourself,

like a duck,
need to look calm and
unruffled
on the surface

but keep paddling like mad
underneath

to both keep afloat and
move forward



2. Your knowledge of your own case

A detailed knowledge of your case is essential

- empowers you
- persuade your opponent of your side's strengths
- anticipate arguments as to weaknesses of your case
- be prepared to counter such arguments
- find out answers to questions before they are asked
- develop a strategy to achieve your outcome, bearing in mind your BATNA

2. Your knowledge of your own case



“By failing to
prepare, you are
preparing to fail.”

Benjamin Franklin



“I’ll going to make him an offer he cannot refuse”

Every party has a right to act unreasonably

Up to them to decide whether they should accept an offer

Don’t try to force it on them

Stubborn as an ass -
more you try to force, more resistant they become



Consequences of being unreasonable and not accepting your proposal

- absolvitor
- failure to beat a Tender
- large contra-account
- failure to beat a Pursuer's Offer and uplift on expenses
- awoken beside a horse's head
- sleep with the fishes



Solution - Tender/ Pursuer's Offer and proceed to court



The Whisky Tango Foxtrot moment - how to deal with a bad cop?

Question their motivation

Why is your opponent acting aggressively?

- their style?
 - try to get round them? Do something they have to get instructions upon - Tender, Pursuer's Offer, enrol motion?
- trying to buy time to get their case in order
 - try to force case on procedurally?



The Whisky Tango Foxtrot moment - how to deal with a bad cop?

Question their motivation

Why is your opponent acting aggressively?

- their client (Pursuer/insurer) is being unreasonable to them regarding restriction of their instructions
- their position is clear and they will not be moving upon it
- In both those scenarios, you may have to make a choice
 - accept their position or resort to BATNA