



SEVENTH EDITION

# NEGOTIATION

Readings, Exercises and Cases

ROY J. LEWICKI

BRUCE BARRY

DAVID M. SAUNDERS

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Hill**  
Education



# Negotiation

Readings, Exercises,  
and Cases

*Seventh Edition*

**Roy J. Lewicki**  
The Ohio State University

**Bruce Barry**  
Vanderbilt University

**David M. Saunders**  
Queen's University



NEGOTIATION: READINGS, EXERCISES, AND CASES, SEVENTH EDITION

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# Dedication

*We dedicate this book to all negotiation, mediation, and dispute resolution professionals who try to make the world a more peaceful and prosperous place.*

*And to John W. Minton (1946–2007): friend, colleague, and co-author.*

## About the Authors

**Roy J. Lewicki** is the Irving Abramowitz Memorial Professor of Business Ethics Emeritus and Professor of Management and Human Resources Emeritus at the Max M. Fisher College of Business, The Ohio State University. He has authored or edited 36 books, as well as numerous research articles and book chapters. Professor Lewicki has served as the president of the International Association for Conflict Management, and he received its Lifetime Achievement Award in 2013. He received the Academy of Management's Distinguished Educator Award in 2005 and was recognized as a Fellow of the Organizational Behavior Teaching Society for his contributions to the field of teaching in negotiation and dispute resolution.

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People negotiate every day. During an average day, they may negotiate with

- the boss, regarding an unexpected work assignment;
- subordinates, regarding unexpected overtime;
- a supplier, about a problem with raw materials inventory management;
- a banker, over the terms of a business loan;
- a government official, regarding the compliance with environmental regulations;
- a real estate agent, over the lease on a new warehouse;
- his/her spouse, over who will walk the dog;
- his/her child, over who will walk the dog (still an issue after losing the previous negotiation);
- and the dog, once out, as to whether any “business” gets done.

In short, negotiation is a common, everyday activity that most people use to influence others and to achieve personal objectives. In fact, negotiation is not only common, but also essential to living an effective and satisfying life. We all need things—resources, information, cooperation, and support from others. Others have those needs as well, sometimes compatible with ours, sometimes not. Negotiation is a process by which we attempt to influence others to help us achieve our needs while at the same time taking their needs into account. It is a fundamental skill, not only for successful management but also for successful living.

In 1985, Roy Lewicki and Joseph Litterer published the first edition of this book. As they were preparing that volume, it was clear that the basic processes of negotiation had received only selective attention in both the academic and practitioner literature. Scholars of negotiation had generally restricted examination of these processes to basic theory development and laboratory research in social psychology, to a few books written for managers, and to an examination of negotiation in complex settings such as diplomacy and labor–management relations. Efforts to draw from the broader study of techniques for influence and persuasion, to integrate this work into a broader understanding of negotiation, or to apply this work to a broad spectrum of conflict and negotiation settings were only beginning to occur.

In the past thirty years, this world has changed significantly. There are several new practitioner organizations, such as the Society for Professionals in Dispute Resolution and the Association for Conflict Resolution, and academic professional associations such as the Conflict Management Division of the Academy of Management and the International Association for Conflict Management that have devoted themselves exclusively to facilitating research and teaching in the fields of negotiation and conflict management. There are several new journals (*Negotiation Journal*, *Negotiation and Conflict Management Research*, *International Journal of Conflict Management*, *International Negotiation*) that focus exclusively on research in these fields. Finally, through the generosity of the Hewlett Foundation, there are a number of university centers that have devoted themselves to enhancing the quality of teaching, research, and service in the negotiation and conflict management fields. Many schools now have several courses in negotiation and conflict

management—in schools of business, law, public policy, psychology, social work, education, and natural resources. Development has occurred in the practitioner side as well. Books, seminars, and training courses on negotiation and conflict management abound. And, finally, mediation has become an extremely popular process as an alternative to litigation for handling divorce, community disputes, and land-use conflicts. In pragmatic terms, all of this development means that as we assembled this seventh edition, we have had a much richer and more diverse pool of resources from which to sample. The net result for the student and instructor is a highly improved book of readings and exercises that contains many new articles, cases, and exercises, which represent the very best and most recent work on negotiation and the related topics of power, influence, and conflict management.

A brief overview of this book is in order. The Readings portion of the book is ordered into seven sections: (1) Negotiation Fundamentals, (2) Negotiation Subprocesses, (3) Negotiation Contexts, (4) Individual Differences, (5) Negotiation across Cultures, (6) Resolving Differences, and (7) Summary. The next section of the book presents a collection of role-play exercises, cases, and self-assessment questionnaires that can be used to teach about negotiation processes and subprocesses.

## New Features and Content Changes

For those readers familiar with the previous edition of this book, the most visible changes in the Seventh Edition are the addition, deletion, and updating of selected Readings, Exercises, Cases, and Questionnaires. We thank all users of the 6th edition who have provided us with feedback on various components of that edition. Changes for the Seventh Edition are as follows:

- Paralleling the change in the companion textbook, *Negotiation*, 7th edition, the readings on the topics of ethics were moved into Section 1. This change was implemented to strengthen the importance of ethics as a core topic in negotiator training and education.
- Every reading in the book was examined for quality, relevance, and datedness. Eight old readings were deleted and ten new ones were added.
- Similarly, every exercise has been examined, with errors corrected and numbers updated as necessary. Eight new exercises were added to the collection.
- One new case was added, and one very old case (Capital Mortgage Insurance Corporation A) was deleted.
- Two new questionnaires were added to the collection.
- Each of the exercises, cases, and questionnaires has an accompanying set of instructor materials, including role-play briefing materials, instructor notes, and debriefing notes. These resources are on a password-protected website, available from your McGraw-Hill representative to adopters of this book.
- The format of this book parallels the fundamental structure of our core textbook, *Negotiation*, 7th edition, published in early 2014. This Reader and the core text can be used together or separately. A shorter version of the text, *Essentials of Negotiation*, 6th edition, can also be used in conjunction with the Readings book, and will be available in early 2015.

Instructors who wish to use selected chapters of *Negotiation* or *Essentials*, and selected readings, exercises, cases, or questionnaires from this volume, should contact McGraw-Hill's CREATE service. Your chosen chapters and activities from any of these books (or other negotiation resource teaching materials) may be combined into a custom book for your course. We encourage instructors to contact their local McGraw-Hill Education representative, or visit the website at [www.mheducation.com](http://www.mheducation.com) or [www.mcgrawhillcreate.com](http://www.mcgrawhillcreate.com) for further information and instructions.

Instructors should also note that the authors and McGraw-Hill have partnered with *ExpertNegotiator.com*. ExpertNegotiator is a set of online tools that serve both student and instructor. Students are provided with a structured negotiation preparation template, keyed to the terminology used in the Lewicki et al. texts, to more thoroughly prepare for negotiation simulations. Instructors can use the software as a course management system to pair students for role-plays (including all role-plays in this *Readings* volume), collect and distribute role information, and provide students with feedback on their negotiation plans. Students access the software by purchasing it as a package price with any of the Lewicki et al. texts. For more information, contact the local McGraw-Hill Education representative, and explore the power of the software at [www.ExpertNegotiator.com](http://www.ExpertNegotiator.com).

## Support Materials

Instructional resources—including an Instructor's Manual, and extensive resource materials on teaching negotiation skills for new instructors—are available to accompany this volume on the text-specific website, [www.mhhe.com/lewickinegotiation](http://www.mhhe.com/lewickinegotiation)

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**Roy J. Lewicki**

**Bruce Barry**

**David M. Saunders**

## Section 1

### Negotiation Fundamentals

- 1.1 Three Approaches to Resolving Disputes: Interests, Rights, and Power 1
- 1.2 Selecting a Strategy 14
- 1.3 Balancing Act: How to Manage Negotiation Tensions 30
- 1.4 The Negotiation Checklist 34
- 1.5 Effective Negotiating Techniques: From Selecting Strategies to Side-Stepping Impasses and Assumptions 48
- 1.6 Closing Your Business Negotiations 65
- 1.7 Defusing the Exploding Offer: The Farpoint Gambit 72
- 1.8 Implementing a Collaborative Strategy 80
- 1.9 Solve Joint Problems to Create and Claim Value 97
- 1.10 The Walk in the Woods: A Step-by-Step Method for Facilitating Interest-Based Negotiation and Conflict Resolution 112
- 1.11 Negotiating with Liars 123
- 1.12 Negotiation Ethics 133
- 1.13 Three Schools of Bargaining Ethics 137

## Section 2

### Negotiation Subprocesses

- 2.1 Negotiating Rationally: The Power and Impact of the Negotiator's Frame 143
- 2.2 Managers and Their Not-So Rational Decisions 153
- 2.3 Untapped Power: Emotions in Negotiation 163
- 2.4 Negotiating with Emotion 171
- 2.5 Negotiating Under the Influence: Emotional Hangovers Distort Your Judgment and Lead to Bad Decisions 179
- 2.6 Staying with No 183
- 2.7 Negotiation via (the New) E-mail 188
- 2.8 Where Does Power Come From? 209

- 2.9 Harnessing the Science of Persuasion 218
- 2.10 The Six Channels of Persuasion 227
- 2.11 A Painful Close 233

## Section 3

### Negotiation Contexts

- 3.1 Staying in the Game or Changing It: An Analysis of *Moves* and *Turns* in Negotiation 239
- 3.2 Bargaining in the Shadow of the Tribe 253
- 3.3 Create Accountability, Improve Negotiations 265
- 3.4 The Fine Art of Making Concessions 269
- 3.5 The High Cost of Low Trust 273
- 3.6 Consequences of Principal and Agent 277
- 3.7 The Tension between Principals and Agents 285
- 3.8 When a Contract Isn't Enough: How to Be Sure Your Agent Gets You the Best Deal 296
- 3.9 This Is Not a Game: Top Sports Agents Share Their Negotiating Secrets 300
- 3.10 Can't Beat Them? Then Join a Coalition 305
- 3.11 Building and Maintaining Coalitions and Allegiances throughout Negotiations 308
- 3.12 How to Manage Your Negotiating Team 312

## Section 4

### Individual Differences

- 4.1 Women Don't Ask 317
- 4.2 Become a Master Negotiator 325
- 4.3 Should You Be a Negotiator? 333

## Section 5

### Negotiation across Cultures

- 5.1 Culture and Negotiation 337

- 5.2 Intercultural Negotiation in International Business 354
- 5.3 American Strengths and Weaknesses 372

**Section 6**  
**Resolving Differences**

- 6.1 Doing Things Collaboratively: Realizing the Advantage or Succumbing to Inertia? 377
- 6.2 Don't Like Surprises? Hedge Your Bets with Contingent Agreements 391
- 6.3 Extreme Negotiations 395
- 6.4 Taking the Stress Out of Stressful Conversations 403
- 6.5 Renegotiating Existing Agreements: How to Deal with "Life Struggling against Form" 412
- 6.6 How to Handle "Extreme" Negotiations with Suppliers 430
- 6.7 When and How to Use Third-Party Help 439
- 6.8 Investigative Negotiation 457

**Section 7**  
**Summary**

- 7.1 Best Practices in Negotiation 465
- 7.2 Getting Past Yes: Negotiating as if Implementation Mattered 475
- 7.3 The Four Pillars of Effective Negotiation 488
- 7.4 Seven Strategies for Negotiating Success 494
- 7.5 Six Habits of Merely Effective Negotiators 500

**Exercises**

- 1. Pemberton's Dilemma 511
- 2. The Commons Dilemma 514
- 3. Pasta Wars 515
- 4. Planning for Negotiations 517
- 5. The Used Car 520

- 6. GTechnica—AccelMedia 522
- 7. Knight Engines/Excalibur Engine Parts 523
- 8. Toyonda 524
- 9. The Pakistani Prunes 525
- 10. Universal Computer Company 526
- 11. Bestbooks/Paige Turner 529
- 12. SeaTech 530
- 13. Eurotechnologies, Inc. 531
- 14. AuraCall Inc. 538
- 15. Island Cruise 539
- 16. Live8 544
- 17. The New House Negotiation 545
- 18. Twin Lakes Mining Company 547
- 19. The Buena Vista Condo 550
- 20. City of Tamarack 551
- 21. Negotiating about Giant Pandas 554
- 22. Ridgecrest School Dispute 555
- 23. Salary Negotiations 561
- 24a. Job Offer Negotiation: Joe Tech and Robust Routers 562
- 24b. Job Offer Negotiation: Jane Tech and Robust Routers 567
- 25. The Employee Exit Interview 571
- 26. Coalition Bargaining 572
- 27. Second South American Conference on the Environment 575
- 28. The Connecticut Valley School 578
- 29. Bakery—Florist—Grocery 581
- 30. Campbell-Lessing Farms 582
- 31. Dogs in the Park 585
- 32. Third-Party Conflict Resolution 587
- 33. Elmwood Hospital Dispute 592
- 34. 500 English Sentences 595
- 35. Sick Leave 596
- 36. Alpha—Beta 597
- 37. Galactica SUV 599
- 38. Bacchus Winery 600
- 39. GRID Site Negotiation 601
- 40. Strategic Moves and Turns 603
- 41. A Team in Trouble 605
- 42. Collecting Nos 606
- 43. The Power Game 608

**Cases**

1. Pacific Oil Company (A) 609
2. Negotiating about Pandas for San Diego Zoo (A) 636
3. Collective Bargaining at Magic Carpet Airlines: A Union Perspective (A) 653
4. Bargaining Strategy in Major League Baseball 662
5. Midwestern::Contemporary Art 673
6. *500 English Sentences* 680
7. Sick Leave 689

**Questionnaires**

1. The Subjective Value Inventory (SVI) 699
2. The Personal Bargaining Inventory 701
3. The SINS II Scale 704
4. Six Channels of Persuasion Survey 706
5. The Trust Scale 709
6. Communication Competence Scale 714
7. The Cultural Intelligence Scale 716
8. The PMD Scale 717

**Index 719**





# Negotiation Fundamentals

## Reading 1.1

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### **Three Approaches to Resolving Disputes: Interests, Rights, and Power**

*William L. Ury*

*Jeanne M. Brett*

*Stephen B. Goldberg*

It started with a pair of stolen boots. Miners usually leave their work clothes in baskets that they hoist to the ceiling of the bathhouse between work shifts. One night a miner discovered that his boots were gone.<sup>1</sup> He couldn't work without boots. Angry, he went to the shift boss and complained, "Goddammit, someone stole my boots! It ain't fair! Why should I lose a shift's pay and the price of a pair of boots because the company can't protect the property?"

"Hard luck!" the shift boss responded. "The company isn't responsible for personal property left on company premises. Read the mine regulations!"

The miner grumbled to himself, "I'll show them! If I can't work this shift, neither will anyone else!" He convinced a few buddies to walk out with him and, in union solidarity, all the others followed.

The superintendent of the mine told us later that he had replaced stolen boots for miners and that the shift boss should have done the same. "If the shift boss had said to the miner, 'I'll buy you a new pair and loan you some meanwhile,' we wouldn't have had a strike." The superintendent believed that his way of resolving the dispute was better than the shift boss's or the miner's. Was he right and, if so, why? In what ways are some dispute resolution procedures better than others?

In this [reading], we discuss three ways to resolve a dispute: reconciling the interests of the parties, determining who is right, and determining who is more powerful. We analyze the costs of disputing in terms of transaction costs, satisfaction with outcomes, effect on the relationship, and recurrence of disputes. We argue that, in general, reconciling interests costs less and yields more satisfactory results than determining who is right, which in turn costs less and satisfies more than determining who is more powerful. The goal of

*Source:* "Three Approaches to Resolving Disputes: Interests, Rights, and Power," from *Getting Disputes Resolved: Designing Systems to Cut the Cost of Conflict*, by William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg, 1988, pp. 3–19. New York: Jossey-Bass, Inc., a subsidiary of John Wiley & Sons, Inc. Used with permission.

dispute systems design, therefore, is a system in which most disputes are resolved by reconciling interests.

## Three Ways to Resolve Disputes

### The Boots Dispute Dissected

A dispute begins when one person (or organization) makes a claim or demand on another who rejects it.<sup>2</sup> The claim may arise from a perceived injury or from a need or aspiration.<sup>3</sup> When the miner complained to the shift boss about the stolen boots, he was making a claim that the company should take responsibility and remedy his perceived injury. The shift boss's rejection of the claim turned it into a dispute. To resolve a dispute means to turn opposed positions—the claim and its rejection—into a single outcome.<sup>4</sup> The resolution of the boots dispute might have been a negotiated agreement, an arbitrator's ruling, or a decision by the miner to drop his claim or by the company to grant it.

In a dispute, people have certain interests at stake. Moreover, certain relevant standards or rights exist as guideposts toward a fair outcome. In addition, a certain balance of power exists between the parties. Interests, rights, and power then are three basic elements of any dispute. In resolving a dispute, the parties may choose to focus their attention on one or more of these basic factors. They may seek to (1) reconcile their underlying interests, (2) determine who is right, and/or (3) determine who is more powerful.

When he pressed his claim that the company should do something about his stolen boots, the miner focused on rights—"Why should I lose a shift's pay and the price of a pair of boots because the company can't protect the property?" When the shift boss responded by referring to mine regulations, he followed the miner's lead and continued to focus on who was right. The miner, frustrated in his attempt to win what he saw as justice, provoked a walkout—changing the focus to power. "I'll show them!" In other words, he would show the company how much power he and his fellow coal miners had—how dependent the company was on them for the production of coal.

The mine superintendent thought the focus should have been on interests. The miner had an interest in boots and a shift's pay, and the company had an interest in the miner working his assigned shift. Although rights were involved (there was a question of fairness) and power was involved (the miner had the power to cause a strike), the superintendent's emphasis was on each side's interests. He would have approached the stolen boots situation as a joint problem that the company could help solve.

### Reconciling Interests

Interests are needs, desires, concerns, fears—the things one cares about or wants. They underlie people's positions—the tangible items they *say* they want. A husband and wife quarrel about whether to spend money for a new car. The husband's underlying interest may not be the money or the car but the desire to impress his friends; the wife's interest may be transportation. The director of sales for an electronics company gets into a dispute with the director of manufacturing over the number of TV models to produce. The director of sales wants to produce more models. Her interest is in selling TV sets; more models mean more choice for consumers and hence increased sales. The director of manufacturing

wants to produce fewer models. His interest is in decreasing manufacturing costs; more models mean higher costs.

Reconciling such interests is not easy. It involves probing for deep-seated concerns, devising creative solutions, and making trade-offs and concessions where interests are opposed.<sup>5</sup> The most common procedure for doing this is *negotiation*, the act of back-and-forth communication intended to reach agreement. (A *procedure* is a pattern of interactive behavior directed toward resolving a dispute.) Another interests-based procedure is *mediation*, in which a third party assists the disputants in reaching agreement.

By no means do all negotiations (or mediations) focus on reconciling interests. Some negotiations focus on determining who is right, such as when two lawyers argue about whose case has the greater merit. Other negotiations focus on determining who is more powerful, such as when quarreling neighbors or nations exchange threats and counter-threats. Often negotiations involve a mix of all three—some attempts to satisfy interests, some discussion of rights, and some references to relative power. Negotiations that focus primarily on interests we call “interests-based,” in contrast to “rights-based” and “power-based” negotiations. Another term for interests-based negotiation is *problem-solving negotiation*, so called because it involves treating a dispute as a mutual problem to be solved by the parties.

Before disputants can effectively begin the process of reconciling interests, they may need to vent their emotions. Rarely are emotions absent from disputes. Emotions often generate disputes, and disputes, in turn, often generate emotions. Frustration underlay the miner’s initial outburst to the shift boss; anger at the shift boss’s response spurred him to provoke the strike.

Expressing underlying emotions can be instrumental in negotiating a resolution. Particularly in interpersonal disputes, hostility may diminish significantly if the aggrieved party vents her anger, resentment, and frustration in front of the blamed party, and the blamed party acknowledges the validity of such emotions or, going one step further, offers an apology.<sup>6</sup> With hostility reduced, resolving the dispute on the basis of interests becomes easier. Expressions of emotion have a special place in certain kinds of interests-based negotiation and mediation.

### **Determining Who Is Right**

Another way to resolve disputes is to rely on some independent standard with perceived legitimacy or fairness to determine who is right. As a shorthand for such independent standards, we use the term *rights*. Some rights are formalized in law or contract. Other rights are socially accepted standards of behavior, such as reciprocity, precedent, equality, and seniority.<sup>7</sup> In the boots dispute, for example, while the miner had no contractual right to new boots, he felt that standards of fairness called for the company to replace personal property stolen from its premises.

Rights are rarely clear. There are often different—and sometimes contradictory—standards that apply. Reaching agreement on rights, where the outcome will determine who gets what, can often be exceedingly difficult, frequently leading the parties to turn to a third party to determine who is right. The prototypical rights procedure is adjudication, in which disputants present evidence and arguments to a neutral third party who has the

power to hand down a binding decision. (In mediation, by contrast, the third party does not have the power to decide the dispute.) Public adjudication is provided by courts and administrative agencies. Private adjudication is provided by arbitrators.<sup>8</sup>

### **Determining Who Is More Powerful**

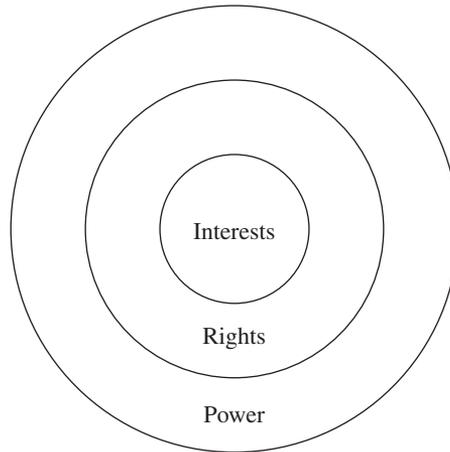
A third way to resolve a dispute is on the basis of power. We define power, somewhat narrowly, as the ability to coerce someone to do something he would not otherwise do. Exercising power typically means imposing costs on the other side or threatening to do so. In striking, the miners exercised power by imposing economic costs on the company. The exercise of power takes two common forms: acts of aggression, such as sabotage or physical attack, and withholding the benefits that derive from a relationship, as when employees withhold their labor in a strike.

In relationships of mutual dependence, such as between labor and management or within an organization or a family, the questions of who is more powerful turns on who is less dependent on the other.<sup>9</sup> If a company needs the employees' work more than employees need the company's pay, the company is more dependent and hence less powerful. How dependent one is turns on how satisfactory the alternatives are for satisfying one's interests. The better the alternative, the less dependent one is. If it is easier for the company to replace striking employees than it is for striking employees to find new jobs, the company is less dependent and thereby more powerful. In addition to strikes, power procedures include behaviors that range from insults and ridicule to beatings and warfare. All have in common the intent to coerce the other side to settle on terms more satisfactory to the wielder of power. Power procedures are of two types: power-based negotiation, typified by an exchange of threats, and power contests, in which the parties take actions to determine who will prevail.

Determining who is the more powerful party without a decisive and potentially destructive power contest is difficult because power is ultimately a matter of perceptions. Despite objective indicators of power, such as financial resources, parties' perceptions of their own and each other's power often do not coincide. Moreover, each side's perception of the other's power may fail to take into account the possibility that the other will invest greater resources in the contest than expected out of fear that a change in the perceived distribution of power will affect the outcomes of future disputes.

### **Interrelationship among Interests, Rights, and Power**

The relationship among interests, rights, and power can be pictured as a circle within a circle within a circle (as in Figure 1). The innermost circle represents interests; the middle, rights; and the outer, power. The reconciliation of interests takes place within the context of the parties' rights and power. The likely outcome of a dispute if taken to court or to a strike, for instance, helps define the bargaining range within which a resolution can be found. Similarly, the determination of rights takes place within the context of power. One party, for instance, may win a judgment in court, but unless the judgment can be enforced, the dispute will continue. Thus, in the process of resolving a dispute, the focus may shift from interests to rights to power and back again.

**FIGURE 1** | Interrelationships among Interests, Rights, and Power

### Lumping It and Avoidance

Not all disputes end with a resolution. Often one or more parties simply decide to withdraw from the dispute. Withdrawal takes two forms. One party may decide to “lump it,” dropping her claim or giving in to the other’s claim because she believes pursuing the dispute is not in her interest, or because she concludes she does not have the power to resolve it to her satisfaction. The miner would have been lumping his claim if he had said to himself, “I strongly disagree with management’s decision not to reimburse me for my boots, but I’m not going to do anything about it.” A second form of withdrawal is avoidance. One party (or both) may decide to withdraw from the relationship, or at least to curtail it significantly.<sup>10</sup> Examples of avoidance include quitting the organization, divorce, leaving the neighborhood, and staying out of the other person’s way.

Both avoidance and lumping it may occur in conjunction with particular dispute resolution procedures. Many power contests involve threatening avoidance—such as threatening divorce—or actually engaging in it temporarily to impose costs on the other side—such as in a strike or breaking off of diplomatic relations. Many power contests end with the loser lumping her claim or her objection to the other’s claim. Others end with the loser engaging in avoidance: leaving or keeping her distance from the winner. Similarly, much negotiation ends with one side deciding to lump it instead of pursuing the claim. Or, rather than take a dispute to court or engage in coercive actions, one party (or both) may decide to break off the relationship altogether. This is common in social contexts where the disputant perceives satisfactory alternatives to the relationship.

Lumping it and avoidance may also occur before a claim has been made, thus forestalling a dispute. Faced with the problem of stolen boots, the miner might have decided to lump it and not make a claim for the boots. More drastically, in a fit of exasperation, he might have walked off the job and never returned.

## Which Approach Is “Best”?

When the miner superintendent described the boots dispute to us, he expressed a preference for how to resolve disputes. In our language, he was saying that on the whole it was better to try to reconcile interests than to focus on who was right or who was more powerful. But what does “better” mean? And in what sense, if any, was he correct in believing that focusing attention on interests is better?

### What “Better” Means: Four Possible Criteria

The different approaches to the resolution of disputes—interests, rights, and power— generate different costs and benefits. We focus on four criteria in comparing them: transaction costs, satisfaction with outcomes, effect on the relationship, and recurrence of disputes.<sup>11</sup>

**Transaction Costs** For the mine superintendent, “better” meant resolving disputes without strikes. More generally, he wanted to minimize the costs of disputing—what may be called the *transaction costs*. The most obvious costs of striking were economic. The management payroll and the overhead costs had to be met while the mine stood idle. Sometimes, strikes led to violence and the destruction of company property. The miners, too, incurred costs—lost wages. Then there were the lost opportunities for the company: a series of strikes could lead to the loss of a valuable sales contract. In a family argument, the costs would include the frustrating hours spent disputing, the frayed nerves and tension headaches, and the missed opportunities to do more enjoyable or useful tasks. All dispute resolution procedures carry transaction costs: the time, money, and emotional energy expended in disputing; the resources consumed and destroyed; and the opportunities lost.<sup>12</sup>

**Satisfaction with Outcomes** Another way to evaluate different approaches to dispute resolution is by the parties’ mutual satisfaction with the result. The outcome of the strike could not have been wholly satisfactory to the miner—he did not receive new boots—but he did succeed in venting his frustration and taking his revenge. A disputant’s satisfaction depends largely on how much the resolution fulfills the interests that led her to make or reject the claim in the first place. Satisfaction may also depend on whether the disputant believes that the resolution is fair. Even if an agreement does not wholly fulfill her interests, a disputant may draw some satisfaction from the resolution’s fairness.

Satisfaction depends not only on the perceived fairness of the resolution, but also on the perceived fairness of the dispute resolution procedure. Judgments about fairness turn on several factors: how much opportunity a disputant had to express himself; whether he had control over accepting or rejecting the settlement; how much he was able to participate in shaping the settlement; and whether he believes that the third party, if there was one, acted fairly.<sup>13</sup>

**Effect on the Relationship** A third criterion is the long-term effect on the parties’ relationship. The approach taken to resolve a dispute may affect the parties’ ability to work together on a day-to-day basis. Constant quarrels with threats of divorce may seriously weaken a marriage. In contrast, marital counseling in which the disputing partners learn to focus on interests in order to resolve disputes may strengthen a marriage.

**Recurrence** The final criterion is whether a particular approach produces durable resolutions. The simplest form of recurrence is when a resolution fails to stick. For example, a dispute between father and teenage son over curfew appears resolved but breaks out again and again. A subtler form of recurrence takes place when a resolution is reached in a particular dispute, but the resolution fails to prevent the same dispute from arising between one of the disputants and someone else, or conceivably between two different parties in the same community. For instance, a man guilty of sexually harassing an employee reaches an agreement with his victim that is satisfactory to her, but he continues to harass other women employees. Or he stops, but other men continue to harass women employees in the same organization.

**The Relationship among the Four Criteria** These four different criteria are interrelated. Dissatisfaction with outcomes may produce strain on the relationship, which contributes to the recurrence of disputes, which in turn increases transaction costs. Because the different costs typically increase and decrease together, it is convenient to refer to all four together as the *costs of disputing*. When we refer to a particular approach as *high-cost* or *low-cost*, we mean not just transaction costs but also dissatisfaction with outcomes, strain on the relationship, and recurrence of disputes.

Sometimes one cost can be reduced only by increasing another, particularly in the short term. If father and son sit down to discuss their conflicting interests concerning curfew, the short-term transaction costs in terms of time and energy may be high. Still, these costs may be more than offset by the benefits of a successful negotiation—an improved relationship and the cessation of curfew violations.

### **Which Approach Is Least Costly?**

Now that we have defined “better” in terms of the four types of costs, the question remains whether the mine superintendent was right in supposing that focusing on interests is better. A second question is also important: when an interests-based approach fails, is it less costly to focus on rights or on power?

**Interests versus Rights or Power** A focus on interests can resolve the problem underlying the dispute more effectively than can a focus on rights or power. An example is a grievance filed against a mine foreman for doing work that contractually only a miner is authorized to do. Often the real problem is something else—a miner who feels unfairly assigned to an unpleasant task may file a grievance only to strike back at his foreman. Clearly, focusing on what the contract says about foremen working will not deal with this underlying problem. Nor will striking to protest foremen working. But if the foreman and miner can negotiate about the miner’s future work tasks, the dispute may be resolved to the satisfaction of both.

Just as an interests-based approach can help uncover hidden problems, it can help the parties identify which issues are of greater concern to one than to the other. By trading off issues of lesser concern for those of greater concern, both parties can gain from the resolution of the dispute.<sup>14</sup> Consider, for example, a union and employer negotiating over two issues: additional vacation time and flexibility of work assignments. Although the union does not like the idea of assignment flexibility, its clear priority is additional

vacation. Although the employer does not like the idea of additional vacation, he cares more about gaining flexibility in assigning work. An agreement that gives the union the vacation days it seeks and the employer the flexibility in making work assignments would likely be satisfactory to both. Such joint gain is more likely to be realized if the parties focus on each side's interests. Focusing on who is right, as in litigation, or on who is more powerful, as in a strike, usually leaves at least one party perceiving itself as the loser.

Reconciling interests thus tends to generate a higher level of mutual satisfaction with outcomes than determining rights or power.<sup>15</sup> If the parties are more satisfied, their relationship benefits and the dispute is less likely to recur. Determining who is right or who is more powerful, with the emphasis on winning and losing, typically makes the relationship more adversarial and strained. Moreover, the loser frequently does not give up, but appeals to a higher court or plots revenge. To be sure, reconciling interests can sometimes take a long time, especially when there are many parties to the dispute. Generally, however, these costs pale in comparison with the transaction costs of rights and power contests such as trials, hostile corporate takeovers, or wars.

In sum, focusing on interests, compared to focusing on rights or power, tends to produce higher satisfaction with outcomes, better working relationships, and less recurrence, and may also incur lower transaction costs. As a rough generalization, then, an interests approach is less costly than a rights or power approach.

**Rights versus Power** Although determining who is right or who is more powerful can strain the relationship, deferring to a fair standard usually takes less of a toll than giving in to a threat. In a dispute between a father and teenager over curfew, a discussion of independent standards such as the curfews of other teenagers is likely to strain the relationship less than an exchange of threats.

Determining rights or power frequently becomes a contest—a competition among the parties to determine who will prevail. They may compete with words to persuade a third-party decision maker of the merits of their case, as in adjudication; or they may compete with actions intended to show the other who is more powerful, as in a proxy fight. Rights contests differ from power contests chiefly in their transaction costs. A power contest typically costs more in resources consumed and opportunities lost. Strikes cost more than arbitration. Violence costs more than litigation. The high transaction costs stem not only from the efforts invested in the fight but also from the destruction of each side's resources. Destroying the opposition may be the very object of a power contest. Moreover, power contests often create new injuries and new disputes along with anger, distrust, and a desire for revenge. Power contests, then, typically damage the relationship more and lead to greater recurrence of disputes than do rights contests. In general, a rights approach is less costly than a power approach.

### **Proposition**

To sum up, we argue that, in general, reconciling interests is less costly than determining who is right, which in turn is less costly than determining who is more powerful. This proposition does not mean that focusing on interests is invariably better than focusing on rights and power, but simply means that it tends to result in lower transaction costs,

greater satisfaction with outcomes, less strain on the relationship, and less recurrence of disputes.

## **Focusing on Interests Is Not Enough**

Despite these general advantages, resolving *all* disputes by reconciling interests alone is neither possible nor desirable. It is useful to consider why.

### **When Determining Rights or Power Is Necessary**

In some instances, interests-based negotiation cannot occur unless rights or power procedures are first employed to bring a recalcitrant party to the negotiating table. An environmental group, for example, may file a lawsuit against a developer to bring about a negotiation. A community group may organize a demonstration on the steps of the town hall to get the mayor to discuss its interests in improving garbage collection service.

In other disputes, the parties cannot reach agreement on the basis of interests because their perceptions of who is right or who is more powerful are so different that they cannot establish a range in which to negotiate. A rights procedure may be needed to clarify the rights boundary within which a negotiated resolution can be sought. If a discharged employee and her employer (as well as their lawyers) have very different estimations about whether a court would award damages to the employee, it will be difficult for them to negotiate a settlement. Nonbinding arbitration may clarify the parties' rights and allow them to negotiate a resolution.

Just as uncertainty about the rights of the parties will sometimes make negotiation difficult, so too will uncertainty about their relative power. When one party in an ongoing relationship wants to demonstrate that the balance of power has shifted in its favor, it may find that only a power contest will adequately make the point. It is a truism among labor relations practitioners that a conflict-ridden union–management relationship often settles down after a lengthy strike. The strike reduces uncertainty about the relative power of the parties that had made each party unwilling to concede. Such long-term benefits sometimes justify the high transaction costs of a power contest.

In some disputes, the interests are so opposed that agreement is not possible. Focusing on interests cannot resolve a dispute between a right-to-life group and an abortion clinic over whether the clinic will continue to exist. Resolution will likely be possible only through a rights contest, such as a trial, or a power contest, such as a demonstration or a legislative battle.

### **When Are Rights or Power Procedures Desirable?**

Although reconciling interests is generally less costly than determining rights, only adjudication can authoritatively resolve questions of public importance. If the 1954 Supreme Court case, *Brown v. Board of Education* (347 U.S. 483), outlawing racial segregation in public schools, had been resolved by negotiation rather than by adjudication, the immediate result might have been the same—the black plaintiff would have attended an all-white Topeka, Kansas, public school. The societal impact, however, would have been far less significant. As it was, *Brown* laid the groundwork for the elimination of racial

segregation in all of American public life. In at least some cases, then, rights-based court procedures are preferable, from a societal perspective, to resolution through interests-based negotiation.<sup>16</sup>

Some people assert that a powerful party is ill-advised to focus on interests when dealing regularly with a weaker party. But even if one party is more powerful, the costs of imposing one's will can be high. Threats must be backed up with actions from time to time. The weaker party may fail to fully comply with a resolution based on power, thus requiring the more powerful party to engage in expensive policing. The weaker party may also take revenge—in small ways, perhaps, but nonetheless a nuisance. And revenge may be quite costly to the more powerful if the power balance ever shifts, as it can quite unexpectedly, or if the weaker party's cooperation is ever needed in another domain. Thus, for a more powerful party, a focus on interests, within the bounds set by power, may be more desirable than would appear at first glance.

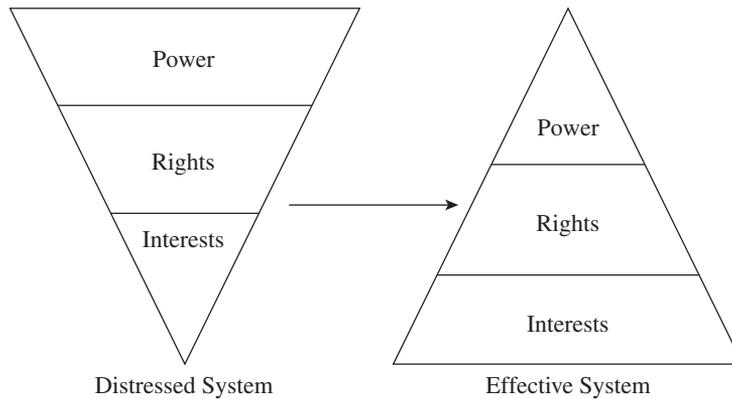
### **Low-Cost Ways to Determine Rights and Power**

Because focusing on rights and power plays an important role in effective dispute resolution, differentiating rights and power procedures on the basis of costs is useful. We distinguish three types of rights and power procedures: negotiation, low-cost contests, and high-cost contests. Rights-based negotiation is typically less costly than a rights contest such as court or arbitration. Similarly, power-based negotiation, marked by threats, typically costs less than a power contest in which those threats are carried out.

Different kinds of contests incur different costs. If arbitration dispenses with procedures typical of a court trial (extensive discovery, procedural motions, and lengthy briefs), it can be much cheaper than going to court. In a fight, shouting is less costly than physical assault. A strike in which workers refuse only overtime work is less costly than a full strike.

### **The Goal: An Interests-Oriented Dispute Resolution System**

Not all disputes can be—or should be—resolved by reconciling interests. Rights and power procedures can sometimes accomplish what interests-based procedures cannot. The problem is that rights and power procedures are often used where they are not necessary. A procedure that should be the last resort too often becomes the first resort. The goal, then, is a dispute resolution system that looks like the pyramid on the right in Figure 2: most disputes are resolved through reconciling interests, some through determining who is right, and the fewest through determining who is more powerful. By contrast, a distressed dispute resolution system would look like the inverted pyramid on the left in Figure 2. Comparatively few disputes are resolved through reconciling interests, while many are resolved through determining rights and power. The challenge for the systems designer is to turn the pyramid right side up by designing a system that promotes the reconciling of interests but also provides low-cost ways to determine rights or power for those disputes that cannot or should not be resolved by focusing on interests alone.

**FIGURE 2** | Moving from a Distressed to an Effective Dispute Resolution System

## Endnotes

1. In order to steer between the Scylla of sexist language and the Charybdis of awkward writing, we have chosen to alternate the use of masculine and feminine pronouns.
2. This definition is taken from W. L. F. Felstiner, R. L. Abel, and A. Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," *Law and Society Review* 15 (1980–81), pp. 631–54. The article contains an interesting discussion of disputes and how they emerge.
3. See W. L. F. Felstiner, R. L. Abel, and A. Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming."
4. In speaking of resolving disputes, rather than processing, managing, or handling disputes, we do not suggest that resolution will necessarily bring an end to the fundamental conflict underlying the dispute. Nor do we mean that a dispute once resolved will stay resolved. Indeed, one of our criteria for contrasting approaches to dispute resolution is the frequency with which disputes recur after they appear to have been resolved. See S. E. Merry, "Disputing Without Culture," *Harvard Law Review* 100 (1987), pp. 2057–73; A. Sarat, "The 'New Formalism' in Disputing and Dispute Processing," *Law and Society Review* 21 (1988), pp. 695–715.
5. For an extensive discussion of interests-based negotiation, see R. Fisher and W. L. Ury, *Getting to Yes* (Boston: Houghton Mifflin, 1981). See also D. A. Lax and J. K. Sebenius, *The Manager as Negotiator* (New York: Free Press, 1986).
6. S. B. Goldberg and F. E. A. Sander, "Saying You're Sorry," *Negotiation Journal* 3 (1987), pp. 221–24.

7. We recognize that in defining rights to include both legal entitlements and generally accepted standards of fairness, we are stretching that term beyond its commonly understood meaning. Our reason for doing so is that a procedure that uses either legal entitlements or generally accepted standards of fairness as a basis for dispute resolution will focus on the disputants' entitlements under normative standards, rather than on their underlying interests. This is true of adjudication, which deals with legal rights; it is equally true of rights-based negotiation, which may deal with either legal rights or generally accepted standards. Since, as we shall show, procedures that focus on normative standards are more costly than those that focus on interests, and since our central concern is with cutting costs as well as realizing benefits, we find it useful to cluster together legal rights and other normative standards, as well as procedures based on either.
8. A court procedure may determine not only who is right but also who is more powerful, since behind a court decision lies the coercive power of the state. Legal rights have power behind them. Still, we consider adjudication a rights procedure, since its overt focus is determining who is right, not who is more powerful. Even though rights, particularly legal rights, do provide power, a procedure that focuses on rights as a means of dispute resolution is less costly than a procedure that focuses on power. A rights-based contest, such as adjudication, which focuses on which disputant ought to prevail under normative standards, will be less costly than a power-based strike, boycott, or war, which focuses on which disputant can hurt the other more. Similarly, a negotiation that focuses on normative criteria for dispute resolution will be less costly than a negotiation that focuses on the disputants' relative capacity to injure each other. Hence, from our cost perspective, it is appropriate to distinguish procedures that focus on rights from those that focus on power.
9. R. M. Emerson, "Power-Dependence Relations," *American Sociological Review* 27 (1962), pp. 31–41.
10. A. O. Hirschman, *Exit, Voice, and Loyalty: Responses to Declines in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970). Exit corresponds with avoidance, loyalty with lumping it. Voice, as we shall discuss later, is most likely to be realized in interests-based procedures such as problem-solving negotiation and mediation.
11. A fifth evaluative criterion is procedural justice, which is perceived satisfaction with the fairness of a dispute resolution procedure. Research has shown that disputants prefer third-party procedures that provide opportunities for outcome control and voice. See E. A. Lind and T. R. Tyler, *The Social Psychology of Procedural Justice* (New York: Plenum, 1988); and J. M. Brett, "Commentary on Procedural Justice Papers," in R. J. Lewicki, B. H. Sheppard, and M. H. Bazerman (eds.), *Research on Negotiations in Organizations* (Greenwich, CT: JAI Press, 1986), pp. 81–90.

We do not include procedural justice as a separate evaluation criterion for two reasons. First, unlike transaction costs, satisfaction with outcome, effect on the relationship, and recurrence, procedural justice is meaningful only at the level of a single procedure for a single dispute. It neither generalizes across the multiple procedures that may be used in the resolution of a single dispute nor generalizes across disputes to construct a systems-level cost. The other costs will do both. For example, it is possible to measure the disputants' satisfaction with the outcome of a dispute, regardless of how many different procedures were used to resolve that dispute. Likewise, it is possible to measure satisfaction with outcomes in a system that handles

many disputes by asking many disputants about their feelings. Second, while procedural justice and distributive justice (satisfaction with fairness of outcomes) are distinct concepts, they are typically highly correlated. See E. A. Lind and T. R. Tyler, *The Social Psychology of Procedural Justice*.

12. O. E. Williamson, "Transaction Cost Economics: The Governance of Contractual Relations," *Journal of Law and Economics* 22 (1979), pp. 233–61; and J. M. Brett and J. K. Rognes, "Intergroup Relations in Organizations," in P. S. Goodman and Associates, *Designing Effective Work Groups* (San Francisco: Jossey-Bass, 1986), pp. 202–36.
13. For a summary of the evidence of a relationship between procedural and distributive justice—that is, satisfaction with process and with outcome—see E. A. Lind and T. R. Tyler, *The Social Psychology of Procedural Justice*. Lind and Tyler also summarize the evidence showing a relationship between voice and satisfaction with the process. For evidence of the effect of participation in shaping the ultimate resolution beyond simply being able to accept or reject a third party's advice, see J. M. Brett and D. L. Shapiro, "Procedural Justice: A Test of Competing Theories and Implications for Managerial Decision Making," unpublished manuscript.
14. D. A. Lax and J. K. Sebenius, *The Manager as Negotiator*.
15. The empirical research supporting this statement compares mediation to arbitration or adjudication. Claimants prefer mediation to arbitration in a variety of settings: labor-management (J. M. Brett and S. B. Goldberg, "Grievance Mediation in the Coal Industry: A Field Experiment," *Industrial and Labor Relations Review* 37 (1983), pp. 49–69), small claims disputes (C. A. McEwen and R. J. Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," *Maine Law Review* 33 (1981), pp. 237–68), and divorce (J. Pearson, "An Evaluation of Alternatives to Court Adjudication," *Justice System Journal* 7 (1982), pp. 420–44).
16. Some commentators argue that court procedures are always preferable to a negotiated settlement when issues of public importance are involved in a dispute (see, for example, O. M. Fiss, "Against Settlement," *Yale Law Journal* 93 (1984), pp. 1073–90), and all agree that disputants should not be pressured into the settlement of such disputes. The extent to which parties should be encouraged to resolve disputes affecting a public interest is, however, not at all clear. See H. T. Edwards, "Alternative Dispute Resolution: Panacea or Anathema?" *Harvard Law Review* 99 (1986), pp. 668–84.



## Reading 1.2

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### Selecting a Strategy

*Roy J. Lewicki*

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After you have analyzed your own position and that of the other party and have looked at the contextual issues of the negotiation, you are ready to select a strategy to use in negotiating with the other party. This lengthy preparation allows you to negotiate strategically, adopting a style and plan that are best suited to the situation. As we have noted before, most people skip this preparation; as a result, they negotiate blind. The right strategy greatly improves your odds of a successful outcome.

In this [reading], we will look at five basic strategies that can be used for negotiation. Each strategy applies to a particular set of circumstances and has its own advantages and disadvantages. If you have done your homework, you will be well prepared for selecting the appropriate strategy or combination of strategies for a particular negotiation situation. Note that we say *combination* of strategies. Most negotiations involve a mixture of issues, and each may be best handled with a different strategy. There is usually no single “best” strategy. Variations in the positions of the parties and the context of the negotiation will affect each negotiation differently. And as negotiations continue over time, each side will make adjustments that may call for shifts or changes of strategy by the other side.

### Key Factors That Determine the Types of Strategies

The five basic types of negotiating strategies depend on your combination of preferences for two basic concerns: the *relationship with the other negotiator* and the *outcome of the negotiation itself*. The strength or importance of each of these two concerns, and their relative priority, should direct the selection of the optimal negotiation strategy. The other party may select a strategy in a similar manner. If they do not, you will want to give serious consideration as to whether you should share this strategic negotiating model with them. Your chances of a good outcome are often better if both parties agree to play by the same rules. The interaction of the two parties’ choices will further influence the negotiation process that actually occurs, and this will have dramatic impact on the outcomes. We will now describe each of these concerns.

#### Relationship Concerns

First, how important is your past and future *relationship* with the other party? How have the two of you gotten along in the past, and how important is it for the two of you to get along, work together, and like each other in the future? Perhaps it is very important. Perhaps it does not matter at all. Perhaps it is somewhere between these extremes. If maintaining

Source: “Selecting a Strategy,” from *Think Before You Speak: A Complete Guide to Strategic Negotiation*, by Roy J. Lewicki, Alexander Hiam, and Karen W. Olander, 1996, pp. 54–75. New York: John Wiley & Sons, Inc. Used with permission.

a good relationship with the other party is important to you, then you should negotiate differently than if the relationship is unimportant, or if it is unlikely that you can repair the relationship.

The importance of the relationship between the two parties will be affected by a number of factors: (1) whether there is a relationship at all; (2) whether that relationship is generally positive or negative (whether the two of you have gotten along well or poorly in the past); (3) whether a future relationship is desirable; (4) the length of the relationship and its history, if one exists; (5) the level of and commitment to the relationship; (6) the degree of interdependence in the relationship; and (7) the amount and extent of free, open communication between the parties.

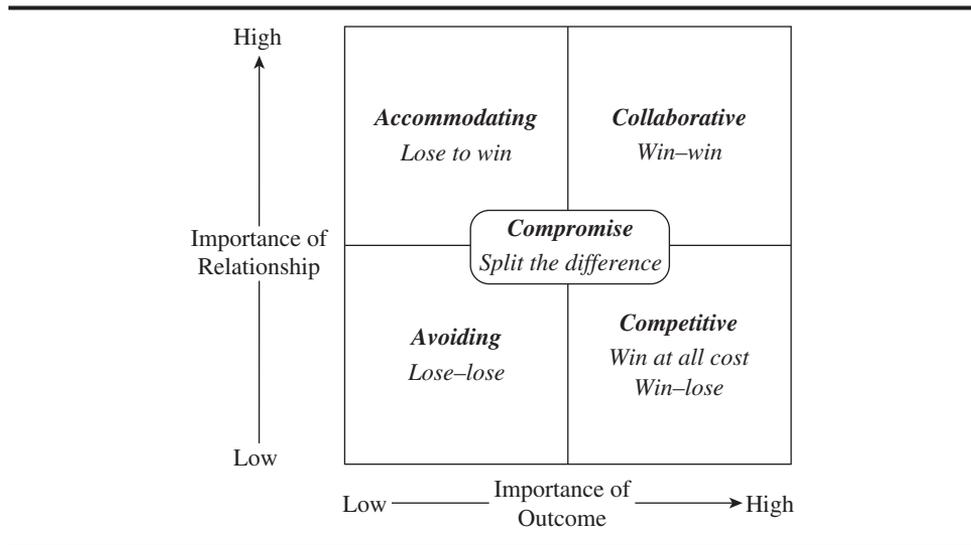
For example, if you are negotiating the purchase of a new car, you may never have met the salesperson before and may not expect to have a continuing relationship. Therefore, your relationship concerns are low. However, if your business uses a fleet of cars and you expect to work with this person on deals in the future, your relationship concerns are high, and this will affect negotiations. Or if you are buying the car from your neighbor, and want to continue to have a good relationship with that person, you may negotiate differently than if you are buying it from a stranger.

In the case of a party with whom you have an ongoing relationship, it may be congenial, or it may be antagonistic if earlier negotiations have been hostile. If it is a congenial relationship, you may wish to keep it that way, and avoid escalating emotions. If the relationship has a history of hostility, you may prefer not to negotiate, or you may want to lower the emotional level in the negotiations. This is important if you expect the relationship to continue in the future.

### **Outcome Concerns**

The second factor affecting negotiating strategy is the importance of the *outcome* of the negotiation. How important is it for you to achieve a good outcome in this negotiation? Do you need to win on all points to gain the advantage? Or is the outcome of only moderate importance? Or does the outcome not really matter in this negotiation? For example, let us return to the car-buying example. If you are buying a car from a dealer, price may be the most important factor, and you may have absolutely no interest at all in the relationship. If you are buying the car from your neighbor, and you want to keep a good relationship with your neighbor, then you might not press as hard to get a good price. Finally, if you are buying the car from your mother simply so that she doesn't have to worry about it any more, you probably are most concerned about the relationship and care very little about the outcome.

The important message is that the priority of each of the two negotiating concerns, relationship and outcome, will direct the strategy you choose to use for a particular negotiation. The relationship may be your top priority, especially if there is a relationship history and you want to maintain the relationship. In contrast, in many other negotiations, the outcome is the most important factor, as in the example of buying a car. Or relationship and outcome may *both* be important. This will require working together with the other party in some fashion to effect a result. If the relationship concerns have a strong influence on the matter at hand, and you decide to emphasize them over the outcome, then you will select a different strategy than you would select where the outcome is more important.

**FIGURE 1** | Negotiation Strategies

If we show the relationship and outcome concerns on a graph, with high and low priorities for each represented, it looks like Figure 1. The vertical axis represents your degree of concern for the relationship, and the horizontal axis represents your degree of concern for the outcome. When we look at the various quadrants created by different levels of concern for relationship and outcome, five distinctly different strategies emerge:

1. *Avoiding (lose-lose)*: This strategy is shown in the lower left of the diagram. In this strategy, the priorities for both the relationship and the outcome are low. Neither aspect of the negotiation is important enough for you to pursue the conflict further. You implement this strategy by withdrawing from active negotiation, or by avoiding negotiation entirely.
2. *Accommodating (lose to win)*: This strategy is represented in the upper left of the diagram, where the importance of the relationship is high and the importance of the outcome is low. In this situation, you “back off” your concern for the outcome to preserve the relationship; you intentionally “lose” on the outcome dimension in order to “win” on the relationship dimension.
3. *Competitive (win-lose)*: The lower right of the diagram represents high concern for the outcome and low concern for the relationship. You use this strategy if you want to win at all cost, and have no concern about the future state of the relationship.
4. *Collaborative (win-win)*:<sup>1</sup> The upper right part of the diagram defines a strategy where there is a high priority for both the relationship and the outcome. In this strategy, the parties attempt to maximize their outcomes while preserving or enhancing the relationship. This result is most likely when both parties can find a resolution that meets the needs of each.

5. *Compromising (split the difference)*: In the middle is an area we will call a compromising, or “satisficing,” strategy. It represents a combination approach that is used in a variety of situations. For example, it is often used when the parties cannot achieve good collaboration, but still want to achieve some outcomes and/or preserve the relationship. Thus, for example, if the parties cannot achieve good collaboration but do not want to pursue the outcome and abandon the concern for the relationship (or vice versa), then a compromising strategy can be effective. It is also often used when the parties are under time pressure and need to come to a resolution quickly. Each party will give in somewhat to find a common ground.

These brief descriptions are ideal or “pure” negotiating situations where there may be only one issue at stake. In contrast, most real-life negotiation situations are frequently complex, and thus are often best addressed by using a mix of strategies. Remember, too, that the other party will be formulating a negotiating strategy. You will find your analysis of the other party helpful when you are selecting the appropriate strategy for a particular situation, because you may want to adjust your strategy choice based on what you expect the other to do. If the parties are able to agree on one strategy, negotiations will be easier. In real-life situations, however, each party may start with a different strategy.

We now look at the five basic negotiating strategies in detail. Although you may be inclined to use one particular strategy, it is a good idea to study the components of each strategy carefully. In this way, you can be prepared for the other party’s moves, if they use a different strategy than you anticipated.

## **Avoiding Strategy (Lose–Lose)**

The avoiding strategy is used infrequently, but has merit in certain situations. Our nickname of this strategy is actually a misnomer, since an active choice of an avoiding strategy is not necessarily a “loss” on either the relationship or the outcome. However, since we tend to refer to the more active pursuits of relationship and outcomes as “winning,” we will call the avoiding strategy a “loss” in terms of the outcome and the relationship.

Why would one choose an avoiding strategy? Because negotiations can be costly (in time, money, and relationships) and there are many cases where negotiators would have been better off to drop the matter entirely! The person employing an avoiding strategy basically sees negotiation as a waste of time—or not worth pursuing. This person may feel that his or her needs can be met without negotiating. In addition, this person may decide that the outcome has very low value and that the relationship is not important enough to develop through the negotiation. As a result, the party reasons that neither the relationship nor the outcome is sufficiently important (at least compared with the costs) and so takes no action or simply refuses to negotiate.

If the “avoider” refuses to negotiate when the other party wants to, this may have a negative effect on the relationship. Even when the outcome is unimportant, many people will prefer to avoid angering the other party. A more moderate method of avoidance may be to not raise any objections to the proceedings, or simply to not show up. If the other party insists on negotiations, and it is important to preserve the relationship, then you might switch to an accommodating strategy.