Tactics, Tricks and Lessons Learned

Slide 1 – Tactics and Lessons Learned
Welcome to this module on Tactics and Lessons Learned.

Slide 2
What is the last gap in a negotiation? It is the last step necessary to reach an agreement between the negotiating parties. Often that last gap or last increment emerges after long and exhausting negotiations that have led to agreement on all but one issue. For example, that one issue may be: "How to cross the difference between $600,000 or $1 million in the parties’ "final" offers?" Most negotiators and business people can relate horror stories about becoming stuck on the last issue of a lengthy negotiation.

Slide 3
Why does the last increment or last issue assume such importance and so often – at least anecdotally - provide a stumbling block to a negotiated settlement? There are a number of possible explanations:
- The last dance - final loss of the conflict or the relationship;
- Unfinished emotional business;
- The last straw - "I have given up so much already";
- Sense of having been tricked;
- Skilled helpers attempt to prove "worth";
- Recriminations for lost time and money;

Click a section to jump to that area.

Slide 4 (repeat of slide 3 for interactivity)
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Click a section to jump to that area. When you are ready to move on click continue.

Slide 5
Negotiations have often been compared to a dance, where one or both parties circle one another reluctant to end the process. The most clinging form of this last dance has been described as “negative intimacy, which occurs when one or both parties are finding meaning to life by being a martyr, or by being in constant conflict. A settlement represents loss of meaning.” Thus the last gap will never be crossed but will be preserved.
Even if the other party concedes the last gap, the "negatively intimate" negotiator will create a new last gap, known as an “add on”. For example, just as agreement is apparently reached, they exclaim "There's something else I want to raise..."; "There's one more thing that has to be done ....", or even "I want an apology". It has to be hoped that not too many individuals with these tendencies are actually operating as negotiators in business – but experience suggests there are some!
Slide 6
The last gap may represent unfinished emotional issues between the disputants or related to the current negotiation, that prevent commercial reality or common sense from prevailing. The dominant method of negotiation in Western cultures has traditionally been positional bargaining.

Each party makes an extreme claim and - by gradual increments - moves towards a resolution point somewhere between those extremes. Repeat players such as corporations are experienced in playing this game.

However, one-off or less experienced negotiators tend to go through disappointment and anger as they see their original claim whittled away by one concession after another. This is particularly so when they believe that their original offer was reasonable, or at least not unrealistic. And sometimes, as they draw to the end, they start to focus on how the result will look with their superiors or colleagues; indeed, a reaction is sometimes the result of an internal review, which concluded they had to go back on certain issues.

At the end of several rounds of mutual concessions, both (now angry) negotiators may have a strong sense that each has conceded so much already that they have "lost" – and cannot accept losing yet again on the last issue. Accordingly, each disappointed disputant digs in and insists that the other concede on the last issue.

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Some negotiators feel this final impasse is the last straw. They have been steamrolled all day and now they are putting up a stop sign to preserve their integrity. A dramatic walkout may also be staged or threatened. The walkout relieves the pressure of the negotiation room, avoids the last concession, demonstrates to all how intensive the pain is, and may inflict some pain on the other side for his or her "unreasonableness".

Negotiators should be able to anticipate the walkout, and normally have a variety of strategies ready to prevent or delay its occurrence. This is because a walkout enables each side to characterize the other as "unreasonable" - one for unreasonably "causing" the termination of the meeting, the other for immaturityly exiting. Each party is stereotyped, and a new cause for a relationship conflict is founded. Additionally, after a walkout, it is difficult to muster enthusiasm, cash and timetables for another face-to-face meeting. Strategies to avoid the last gap, including preventing walk-outs, will be discussed shortly.

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Some negotiators sense that they have been tricked when the negotiations reach the last gap, and someone predictably suggests "split the difference". This is because they believe that their first offer was "reasonable", whereas the other parties' first offer was wildly exaggerated. The standard process of incremental concessions has left the range of offers biased towards the "exaggerated" opening offer.

The person who perceives that he or she opened reasonably will often be fuming for being "punished" for his or her reasonable behavior. This pattern of behavior of course encourages some experienced negotiators to avoid opening with reasonable offers. Even more experienced negotiators will tend to discuss how negotiations should open - firm reasonable or soft high - before the process starts.

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The last gap is sometimes a sticking point as the negotiators want to win that gap both to establish their skill and, if they are independent skilled contractors, to further justify their fees.

Clients will face triple disappointment if they "lose" their expected outcome, "lose" the last gap, and then have to pay incremental fees to outside consultants (such as lawyers and accountants) from their diminished share. Lawyers understand the marketing need to justify their fees and to support disenchanted clients who will be their main source of publicity for
future clients. Therefore some lawyers may feel the need to negotiate long and aggressively on the last gap.

**Slide 10**
Reaching the last gap sometimes brings home a depressing reality to one or all the negotiating parties. They are about to settle for a deal that was offered and rejected previously, with nothing to show for the extra tension, absences from work, uncertainty and costs – not to mention the possible loss of face with peers and management. This often results in angry statements, particularly by less experienced negotiators, and can make navigating the last gap a tense passage of blame and defense both within and across negotiating teams.

**Slide 11**
Another variant, not truly a last gap but certainly as frustrating, is where one or other party seeks to revisit one or several items in an apparently ‘closed’ negotiation. This typically happens because there has been some form of internal review, which may relate to factors such as changed business circumstances or the original negotiators operating outside their boundaries of either authority or knowledge. Such situations are not uncommon in major corporations, especially in complex deals. Not only does this create a complex internal negotiation to drive an agreed approach back to the other side, it obviously causes distress or anger for the other party.

Often, the party seeking to reopen the discussions will introduce a new negotiator. In such circumstances, it is critical that the initiating party has planned and rehearsed their approach. This must include minimizing the issues to those that are truly important and trying to couch each of these in terms that illustrate to the other side what it stands to lose without agreed changes. In the end, the original negotiator will inevitably lose some face – but it is not in your interests typically to discredit any individual. Greatest focus must be on the ‘sales’ message of why the overall package now being proposed is also beneficial to the other side.

**Slide 12**
0 – Are there any strategies to avoid the last gap in negotiations or is it inevitable?
The most obvious way to avoid – or at least limit the impact – of the Last Gap is simply by being aware – and ensuring others in your team are aware – of its likelihood. This awareness will ensure you remain in control and reduce the sense of panic or anger, which you, or fellow team members, might otherwise feel and which can easily result in bad decisions. Tactics to address the issue are:

**Slide 13**
Prepare for the gap discussion by having something ready to give. Reflecting standard negotiation principles, the “something” should be of high value to the offeree, but of lower value to the offeror. Identifying these extras requires that you have undertaken a search for the interests, needs and goals of the other side.

**Slide 14**
Some practice “open high, as it is easy to give up something; but very difficult to take back”. This approach often leaves some margin for final concessions around the last gap. However, it can cause deadlock or even termination early in the negotiation. Used against an experienced negotiator or client, the maximized claim is usually readily identified, named and ignored. So if using this approach, it is critical to ensure a ‘soft’ position to allow withdrawal / change without compromising credibility.
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Another preventative strategy is to open communications in a problem-solving style. For example, “We have the following five goals”. “My client has the following three concerns...”; “This is our understanding of your requirements”; “We are willing to discuss possible options or solutions but would first like you to set out your general or specific concerns and goals”; “Can you provide us with the following information and documents so that we can ensure our best offer”.

These classic problem-solving openings are designed to delay stating positions, maximize communication, reduce suspicion and put as many chips of value on the negotiating table as possible. It is worth spending time to enlarge the pie so that packaged or linked bargaining can then take place. The last gap is delayed by keeping all issues unresolved through conditional and linked offers at different levels of finalization. Nothing is certain, much is possible.

It has been one of the myths of the Alternative Dispute Resolution or ‘ADR’ industry that this helpful problem-solving approach will dispense with positional bargaining and the last gap. This is clearly not correct. Even a packaged and linked multi-issue offer eventually becomes specific in its terms, and at that point there may be a last gap.

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Apart from anticipating the last gap, what strategies are available to cross this hurdle in negotiations? Firstly it is crucial to realize that there are often many solutions and there still is opportunity to identify the most acceptable of these; so avoid a dramatic and premature walkout before all the options have been considered.

There are many options for crossing the Last Gap: We’ll look at each:
- Talk/try to convince
- Split difference
- Expanding the pie by subdividing the last gap
- Expanding the pie by an add-on offer “What if I moved on”
- Refer to a third party umpire
- Chance flip coin or draw from a hat (if the outcome really doesn’t much matter to you)
- Transfer the last gap to a third party
- Conditional offers and placating incremental fears –“What if I could convince our side to...? How would you respond?”
- Pause and speak to others, obtain advice
- Pause and schedule time for a specific offer
- Click a section to go to that topic.

Slide 17
Click a section to go to that topic.
Click continue to move on.

Slide 18
A common response is for one or both negotiators to re-hash old arguments in an attempt to convince the other party to give in. Typical examples include:
- “I have given up so much in these negotiations; now it's your turn”;
- a long list of the merits of the speaker's claims, and the weaknesses of the other side;
- an angry speech about how the listener's first offer was outrageous, so he or she should make the last incremental concession “to be fair”;
- a lengthy speech about the cost of litigation, the costs already incurred and the likelihood of settlement at the door of the court;
- a detailed historical version of the concessions made to date in the negotiation leading to the predictable conclusion that it is the listener's turn to be reasonable and make the last concession;
a short but angry speech with express or implied threats about walking out, stonewalling, escalating etc.;
a combination of some or all of these speeches.

Such approaches rarely appear to be directly successful in crossing the last gap. The listeners may become inflamed to hear such a one-sided presentation so late in the day, and deliver a counter speech. The speaker may back himself or herself into a positional corner. Nevertheless, used with judgment, some degree of managed speech making at the last gap can be effective. If, for example:
if it is in extreme contrast to behavior exhibited at all prior stages of the negotiation
if it is based on indisputable fact
if your aim is to test the seriousness of the other side
if you know that the other side is weak or lacks overall support for their position (e.g. team is not unanimous or their senior management takes a different view).

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This method is commonly suggested where the last gap consists of money or other divisible items. It has the merit of simplicity – that both parties “lose” equally and that it is culturally commonplace.
However, given the complex psychological dynamics surrounding the last gap, splitting the difference may be seen as too quick, part of an orchestrated plan of attack, or involving another painful loss. And it may also be completely illogical.

Slide 20
The last increment can sometimes be divided in ways apart from an equal split by dividing the time of use or time of payment. For example:
The last $10,000 can be paid over time in installments;
The last $100,000 can be paid at a later date with accrued interest.

Slide 21
You can attempt to overcome an impasse by re-opening a "decided" issue, or adding another issue to the negotiating table.
In this way, you seek to prevent the last issue from being the last. It is not always easy to re-open or to discover extra value to place on the bargaining table.

One of the clear benefits of questioning and listening skills is that a negotiator can develop ideas on the needs, concerns and interests of the other party and save items for introduction if required. Some negotiators begin bargaining with a positional style. When an impasse is reached, they switch (or have a fellow negotiator switch) to an interest-based problem-solving approach.

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The last item can be "resolved" by:
Agreeing to refer the whole dispute to an arbitrator or to a judge;
Agreeing to refer just the issue of crossing the last gap to an arbitrator.
In mediation, the disputants may request that a trusted mediator make a recommendation or a binding decision on how the impasse should be resolved.
Judging and arbitrating have several alternative approaches which can be set out for disputants to consider. These include baseball arbitration (both parties submit a figure to the arbitrator who can only choose one of the submitted figures); night baseball arbitration (both parties submit secret and sealed offers; the arbitrator makes a decision and opens the sealed offers; the offer closest to the arbitrator’s decision is binding); high-low arbitration (parties agreed to the range of outcomes; the arbitrator can only decide within that range); scope arbitration (the arbitrator is only authorized to decide upon a range of outcomes divided by, say, 15 per cent; parties agree to settle within that range); on-the-papers
arbitration (a cheap and quick decision-making process where there are no oral presentations); in early neutral evaluation (an expert gives a non-binding assessment of the likely court outcome of a dispute).

**Slide 23**
Chance provides an important option for deciding who gets the last gap. One option is flipping a coin:

- It's cheap and fast;
- involves an equal chance of winning or losing;
- avoids loss of face by being "beaten" by other, more personal strategies;
- is so abhorrent to some risk-averse disputants that they return to the remaining list of options with enthusiasm!

**Draw from a Range of Solutions**
This alternative version of chance avoids the all-or-nothing result of flipping a coin. Several solutions are written out on slips of paper, placed in a hat, and the one drawn out prevails. For example if the last increment is $20,000, then ten slips of paper can be placed in a hat beginning with $2,000 and ending with $20,000 with gaps of $2,000 written on each slip of paper. The drawer receives whatever number is on the drawn piece of paper; the residue of the last gap goes to the other disputant. Of course this method can be extended to a range of more complicated alternative solutions.

**Slide 24**
This option involves both parties agreeing to transfer the last gap to pay the fees of skilled helpers such as lawyers or mediators, or to pay for renovating a business before a sale. Such transfers to third parties may have the clear benefits of mutually avoiding a "loss", and of wedding a third party to the solution chosen.

**Slide 25**
Where a pattern of incremental bargaining has been established, each disputant will usually be concerned about the consequences of initiating any offer across the last gap. Why? Because any offer is likely to be whittled away by an incremental counter offer. For example, if the last gap between A and B is $20,000, and A offers to split the difference ($10,000 to A), how is B likely to respond? B is likely to respond, split the difference again –only $5,000 to A. Thus there is a reluctance to make the first move, and the impasse remains intact.

Some negotiators make exploratory conditional offers in an attempt to avoid incremental counter-offers. This works best if there are at least two negotiators on each negotiating team. Negotiator 1: "What if I could persuade my team to make a split the difference offer. Would you guarantee that you wouldn't try to cut down her offer?"
Opposing Negotiator: "Let us talk about this in private for a moment. We'll be right back."
A negotiator attempting to discover the other side's willingness to settle for a hypothetical offer can manipulate this option. However, the other side's response is also conditional ("if your client makes that offer") and can be withdrawn.

**Slide 26**
The intensity of a negotiation or mediation session means that it is easy to become weary, to lose perspective and to make "a mountain out of a molehill". Additionally, some people are cautious and are accustomed to reflecting upon options available before making a commitment.

It is a helpful strategy to suggest a break to consider one or more written options, with a clear appointment to resume negotiations, and with encouragement for each disputant to speak to specified trusted third parties. Where a mediator is being used, it is often helpful for
all disputants to make contact during the break to clarify, brainstorm and hypothesize on negotiation dynamics (for example, “What will be the likely response if I make this offer”?).

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As a variation on the previous procedure, the parties can actually draft a precise or general form of offer before the break is taken. This may, for example, represent “splitting the difference” which is too difficult to swallow during the negotiations.

A time and place is then agreed to accept or reject the offer and, if necessary, to return to the negotiation/mediation table.

This procedure gives a concrete proposal, reduces the fear of incremental haggling during the break, provides a deadline, and allows the parties to return to the negotiation table knowing what has been decided.

Slide 28
Sometimes parties will use tricks or ploys in negotiation in an attempt to gain an advantage. These may sometimes be unethical; often you may perceive them as unfair. Such approaches may include good guy/bad guy routines, uncomfortable seating, and leaks to senior management.

Slide 29
Do you believe these tricks or ploys to be legitimate or unethical?

Slide 30
Tricks and ploys fall into three primary categories.

Parties may engage in deliberate deception about the facts, their authority, or their intentions. The best way to protect against being deceived is to seek verification of the other side's claims. It may help to ask them for further clarification of a claim, or to put the claim in writing. However, in doing this it is very important not to be seen as calling the other party a liar; that is, as making a personal attack.

Another common type of tactic is psychological warfare. When the tricky party uses a stressful environment, the principled party should identify the problematic element and suggest a more comfortable or fair change. Subtle personal attacks can be made less effective simply be recognizing them for what they are. Explicitly identifying them to the offending party will often put an end to such attacks. Threats are a way to apply psychological pressure. The principled negotiator should ignore them where possible, or undertake principled negotiations on the use of threats in the proceedings.

The last class of trick tactics are positional pressure tactics which attempt to structure negotiations so that only one side can make concessions. The tricky side may refuse to negotiate, hoping to use their entry into negotiations as a bargaining chip, or they may open with extreme demands. The principled negotiator should recognize this as a bargaining tactic, and look into their interests in refusing to negotiate.

Slide 31
They may escalate their demands for every concession they make. The principled negotiator should explicitly identify this tactic to the participants, and give the parties a chance to consider whether they want to continue negotiations under such conditions.

Parties may try to make irrevocable commitments to certain positions, or to make take-it-or-leave-it offers. The principled party may decline to recognize the commitment or the finality of the offer, instead treating them as proposals or expressed interests. Insist that any
proposals be evaluated on their merits, and don't hesitate to point out unacceptable behaviors.

**Slide 32**
Based on the above, what we really want to explore is whether tricks or ploys have a place in your negotiating portfolio and if so, when?

**Slide 33**
In the text box on screen type in some of your thoughts on the results of using tricks or ploys. Click submit to move forward.

**Slide 34**
Negotiation can be defined as the process by which parties come to terms on a particular matter in which they have corresponding or complementary desires. Both selling and negotiating are about getting others to agree to your ideas and the key word here is persuasion. To achieve your goals you must have understood relative strengths and weaknesses and have an appreciation of theories of human motivation. As we have illustrated, this understanding and appreciation matters as much in marshalling your own side as it does the other side. Indeed, the internal negotiation can be more complex due to the lack of willingness by your key players to cooperate. Motivation is therefore a key element in negotiation – that is, the inclination to do or not to do something. People generally want to achieve balance – which is why they react badly if they feel pressured to move on something they regard as unnecessary or undesirable; or if they feel the proposition they are being asked to accept is fundamentally unfair. There are positive and negative factors in all things that motivate us and in most business deals, they operate in combination. In general, better and lasting results are achieved through positive motivational influences.

Remember the core ‘human needs' that drive motivation and how they can be used to achieve your goals.

**Slide 35**
If the negotiation stalls or gets stuck, resell the deal. Understand that each party may have a different point of view. Go back to basics, to be sure they recall what is at stake. Restate features and benefits of your proposal and achieved in the negotiation to date. Specify and ensure understanding of the objection, then find out what you have to do to address these issues. Offer conditional compromise (“if I can get you X, will this be OK?”). Offer a collateral benefit that appears to provide more than you are getting in return. Be ready to move to the ‘lost sale’ approach – “It’s a pity we couldn’t agree, can we spend a few minutes just looking at how this might have been avoided?” – and then see if this provides an opening to identify the real objection and resell.

**Slide 36**
Overall, key rules are:
- Be prepared, do your research on the other side
- Know your strengths and weaknesses
- Determine firm goals (top, bottom, target) before you enter the negotiation
- Ensure all team goals are known and compatible
- Don’t deviate from your goals; and make sure the team has adopted and sticks with them
- Trade concessions, never give something for nothing
- Don’t start trading until you have sold the basic deal; make sure you have ‘sold’ your proposal in general terms: without first selling the deal you have nothing to negotiate; you
cannot finalize something that is as yet not fully desired, or where the desires are in fact different.
Use logic to sell your ideas.
Be ready to walk away from bad deals.

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This concludes our Module. Please take the time to complete the Module Feedback. Once you have completed the Module Feedback, we recommend that you go to the Attachments to review the additional information.

A Module Test is available for you to take in order to check your understanding of the material or practice for the Certification Exam. The required pass rate for all Module Tests is 80%. You may take this test as many times as you wish: please allow 24 hours between each attempt.

Once you have passed all the Module Tests with at least 80% you will be invited to take the Certification Exam.