litigation, which required HTC to pay $6–$8 to Apple for every Android-equipped handset sold. Both sides were happy to have reached an agreement, and HTC CEO was stated saying, "We can focus on innovation instead of litigation."[117]

CONCLUSION

When it comes to slicing the pie, the most valuable information is a negotiator's best alternative to reaching agreement (BATNA). Nothing can substitute for the power of a strong BATNA. Negotiators can enhance their ability to garner a favorable slice of the pie by engaging in the following strategies: determine your BATNA prior to negotiations and attempt to improve upon it; determine your reservation point; research the other party's BATNA; set high aspirations; make the first offer; immediately reanchor if the other party opens with an "outrageous" offer; plan your concessions; support your offers with facts; appeal to norms of fairness; and do not fall for the "even split" ploy. Negotiators should not reveal their reservation price (unless it is very attractive) and never lie about their BATNA. A negotiator who is well versed in the psychology of fairness is at a pie-slicing advantage in negotiation.

[117] Claburn, T. (2012, November 12). HTC settles Apple lawsuit. *Information Week*. informationweek.com; Savitz, E. (2012, November 12). Apple, HTC settle patent suits; sign 10-year licensing deal. *Forbes*. forbes.com.

4 WIN-WIN NEGOTIATION: EXPANDING THE PIE

It might not seem possible for environmentalists, energy developers, and state legislators to agree about anything, much less reach win-win agreement. A long-running battle over aging wind turbines in Northern California pitted the interests of three wildly different parties with opposing motives against one another. But when California Attorney General Jerry Brown brokered a settlement between environmental groups, wind developer NextEra Energy Resources, and the state, it was enthusiastically embraced by all sides. Altamont Pass, east of San Francisco, is a breeding area and a major migratory route for raptors and other species. Tragically, the turbines kill between 1,700 and 4,700 birds each year—the most of any wind farm in the United States—and injure or kill federally protected birds such as golden eagles and red-tailed hawks. In the integrative settlement, the environmentalists' interests—the native migratory birds—are protected. Moreover, the state's long-term interests of deriving 33% of its power from clean energy moved a step forward, and the new turbines produced more power more efficiently than the models they replaced. More than 400 of the old turbines were removed and replaced with new turbines generating 2.3 megawatts of electricity—enough to power 600–700 homes. The settlement cleared the way for NextEra to plan its new wind farm at the site and begin securing deals with utilities, which are required under California's strict renewable energy goals to derive 33% of their power from clean sources by 2020.[1]

The opening example suggests that even the most contentious negotiations contain potential for win-win agreements. However, win-win negotiation techniques are not intuitive. Many people who regard themselves to be win-win negotiators often leave money on the table without realizing it. This chapter provides strategies for expanding the pie.

[1] Hill, D. (2012, June 5). Altamont Pass celebrates "repowering" of wind farm. *San Jose Mercury News*. mercurynews.com; Dearen, J. (2010, December 7). Northern California wind turbines to be upgraded. *Bloomberg Businessweek*. businessweek.com.

WHAT IS WIN-WIN NEGOTIATION?

Most people equate win-win negotiations with the fair division of resources. Obviously, allocating resources is always necessary in negotiation, but win-win means something entirely different. Win-win is *not:*

- ***Compromise:*** Compromise refers to reaching a middle ground between negotiators' positions. Win-win negotiation does not pertain to how the pie is *divided* (Chapter 3) but rather, to how the pie is *enlarged* by negotiators.
- ***Even split:*** Even splits, like compromises, refer to how the bargaining zone is divided among the negotiators. For example, two sisters who quarrel over an orange and ultimately decide to cut it in half have reached an even split. However, if they fail to realize that one sister wants all the juice and the other wants all of the rind, it is painfully clear that the even split is not win-win.[2]
- ***Satisfaction:*** Satisfaction is no guarantee that money and resources have not been wasted; in fact, many "happy" negotiators do not expand the pie.[3]
- ***Building a relationship:*** Building a relationship and establishing trust comprise an important aspect of negotiation. However, people with a genuine interest in the other party may not think creatively. In fact, people who would seem to have the most interest in building a relationship with the other party (e.g., husbands and wives, dating couples, and long-term partners) often fail to reach integrative agreements.[4]

Win-win negotiation really means that all creative opportunities are leveraged and no resources are left on the table. We call these outcomes **integrative negotiations.**

TELLTALE SIGNS OF WIN-WIN POTENTIAL

Integrative potential exists in just about every negotiation situation. However, people often fail to see it because they do not believe that win-win is possible. The following are questions for negotiators to ask when assessing the potential of a negotiation situation.

Does the Negotiation Contain More Than One Issue?

Most negotiations begin as single-issue negotiations. By definition, single-issue negotiations are not win-win because whatever one party gains, the other party loses. However, it is usually possible to identify more than one issue. The probability that negotiators will have identical preferences across all issues is small, and *it is differences in preferences, beliefs, and capacities that may be profitably traded off to create joint gain.*[5]

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[2] Follett, M. (1994). In P. Graham (Ed.), *Mary Parker Follett: Prophet of management—A celebration of writings from the 1920s.* Boston: Harvard Business School Press.

[3] Thompson, L., Valley, K. L., & Kramer, R. M. (1995). The bittersweet feeling of success: An examination of social perception in negotiation. *Journal of Experimental Social Psychology, 31*(6), 467–492.

[4] Fry, W. R., Firestone, I. J., & Williams, D. L. (1983). Negotiation process and outcome of stranger dyads and dating couples: Do lovers lose? *Basic and Applied Social Psychology, 4,* 1–16; Thompson, L., & DeHarpport, T. (1998). Relationships, good incompatibility, and communal orientation in negotiations. *Basic and Applied Social Psychology, 20*(1), 33–44; Kurtzberg, T., & Medvec, V. H. (1999). Can we negotiate and still be friends? *Negotiation Journal, 15*(4), 355–361.

[5] Lax, D. A., & Sebenius, J. K. (1986). *The manager as negotiator.* New York: Free Press.

Illustrion of Examples

Can Other Issues Be Brought In?

Another strategy is to bring additional issues into the negotiation. For example, when the National Hockey League owners and players were embroiled in a crippling 112-day lockout in 2012–2013, the main contention was the hammering out of a new 10-year collective bargaining agreement between the players' union and league owners. Midway through negotiations, a new issue was introduced—namely, limits on how much less in salary a veteran player could make from one year to the next. Both sides were then able to make concessions and began playing hockey once again.[6]

Can Side Deals Be Made?

In many situations, people are strictly cautioned not to make side deals or side payments. However, when side deals allow more issues to be added to the mix, this increases the possibility of creative conflict resolution.[7] For example, consider how the introduction of a side deal allowed a breakthrough in the highly contentious American Airlines and US Airways merger. When merger talks were underway, the U.S. Justice Department filed an antitrust lawsuit to block the deal and was joined by six states, including Texas (American Airlines headquarters) and Arizona (home base of US Airways). During this time, Texas Attorney General, Greg Abbott crafted a side deal to settle Texas' case with the airlines, and in so doing created momentum for a larger settlement. In the side deal, the new combined airline relinquished landing and take-off rights at two major airports (Reagan National in Washington, D.C. and LaGuardia in New York) and two gates each at five other airports. With these concessions, the merger between American and US Airways bypassed litigation to successfully close a deal.[8]

Do Parties Have Different Preferences Across Negotiation Issues?

If parties have different strengths of preference across the negotiation issues, then a win-win negotiation is possible.[9] Consider the orange-splitting example. Essentially, the situation involves two issues: the juice and the rind. One sister cares more about the juice; the other cares more about the rind. If only a single issue (the orange) was involved or if both sisters wanted the juice much more than the rind, then an integrative agreement would not be possible.

Consider how the different preferences held by negotiation parties after the fall of the Soviet Union paved the way toward an integrative agreement amid a highly charged atmosphere. The materials and expertise needed to make highly lethal bioweapons—anthrax, smallpox, cholera, plague, hemorrhagic fevers—were stockpiled in labs in the former Soviet Union province of Kazakhstan for sale to the highest bidder, presenting a global threat. The fall of the Soviet Union devastated the livelihood of biologists working in government-run labs. The governments of many countries needed a method to secure the nuclear as well as chemical and

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[6] Kwak, S. (2013, January 6). Who gets what: Key points of the NHL's new CBA deal. *Sports Illustrated.* sportsillustrated.cnn.com.

[7] Leonard, D. (2013, March 7). How Disney bought Lucasfilm—and its plans for "Star Wars." *Businessweek,* businessweek.com

[8] Koening, D. (2013, December 12). American Airlines, US Airways merger back on after deal with feds. *San Jose Mercury News.* mercurynews.com.

[9] Froman, L. A., & Cohen, M. D. (1970). Research reports. Compromise and logroll: Comparing the efficiency of two bargaining processes. *Behavioral Science, 15*(2), 180–183.

biological materials contained in these labs from criminal or terrorist hands. A win-win solution was reached that provided security for the governments involved and gainful employment for scientists. Specifically, the Pentagon agreed to establish and build new, secure facilities within Kazakhstan as a Central Reference Laboratory dedicated to the study and protection of power pathogens.[10]

MOST COMMON PIE-EXPANDING ERRORS

If reaching win-win negotiation agreements is the objective of most negotiators, what prevents them from doing so? Negotiators encounter two key problems, which we describe next.

False Conflict

False conflict, also known as **illusory conflict**, occurs when people believe that their interests are incompatible with the other party's interests when in fact, they are not. For example, in the Cuban Missile Crisis, unbeknownst to the United States, Russia preferred to constrain the Cubans from provocative behavior and to minimize the contributions of the Chinese—an interest held by the United States.[11] Similarly, in a labor strike at the Dow Chemical Company, both union and management preferred the same wage increase, but neither party realized this fact at the time of the strike.[12]

Consider a particularly insidious and widespread effect in negotiations: **the lose-lose effect**. We constructed a negotiation situation in which parties had compatible interests on a few of the negotiation issues, meaning both parties wanted the same outcome. At first, it seemed absurd to imagine any outcome occurring other than the parties settling for what was obviously the best solution for themselves and the other party. However, a substantial number of negotiators not only failed to realize that the other party had interests that were completely compatible with their own, but they reached settlements that were less optimal for both parties than other readily available outcomes. The failure to capitalize on compatible interests is known as a lose-lose agreement.[13] In an analysis of 32 different negotiation studies across more than 5,000 people, negotiators failed to realize compatible issues about 50% of the time and fell prey to the lose-lose effect about 20% of the time.[14]

What should negotiators do to avoid lose-lose agreements? First, they should be aware of the fixed-pie perception and not assume that their interests are opposed to the other party. Second, negotiators should avoid making **premature concessions** to the other party (i.e., conceding on issues before even being asked). Third, negotiators should develop an accurate understanding of the other party's interests—a skill we explore shortly.

[10] Pasternack, A. (2013, August 29). Why the U.S. is Building a high-tech bubonic plague lab in Kazakhstan. *Popular Science*. popsci.com.

[11] Walton, R. E., & McKersie, R. B. (1965). *A behavioral theory of labor relations*. New York: McGraw-Hill.

[12] Balke, W. M., Hammond, K. R., & Meyer, G. D. (1973). An alternate approach to labor-management relations. *Administrative Science Quarterly, 18*(3), 311–327.

[13] Thompson, L., & Hrebec, D. (1996). Lose-lose agreements in interdependent decision making. *Psychological Bulletin, 120*(3), 396–409.

[14] Thompson, & Hrebec, "Lose-lose agreements in interdependent decision making."

Fixed-Pie Perception

The **fixed-pie perception** is the belief that the other party's interests are directly and completely opposed to one's own interests.[15] Most untrained negotiators view negotiation as a pie-slicing task: They assume that their interests are incompatible, that impasse is likely, and that issues are settled one by one rather than as packages.[16] For example, in one investigation, negotiators' perceptions of the other party's interests were assessed immediately before, during, and then following a negotiation.[17] Most negotiators (68%) perceived the other's interests to be completely opposed to their own. However, negotiators shared some interests that could be profitably traded off or were completely compatible.

Unfortunately, banishing the fixed-pie perception is difficult. It is not enough to warn negotiators of its existence.[18] Further, it is not enough for negotiators to have experience.[19] It is not even enough for negotiators to receive feedback about their counterparties' interests to eliminate the fixed-pie perception.[20] We will talk more about how to successfully challenge the fixed-pie perception when we examine biases and creativity (Chapter 8).

Lack of time and effort do not explain lose-lose outcomes and the fixed-pie perception. The biggest detriment to the attainment of integrative agreements is the faulty assumptions we make about the counterparty and the negotiation situation. Rarely are negotiations purely competitive situations. Rather, most negotiation situations are mixed-motive in nature, meaning that parties' interests are imperfectly correlated with one another. The gains of one party do not represent equal sacrifices by the other. For example, consider a negotiation between two collaborators on a joint project: One is a risk-averse negotiator who values cash up front more than riskier long-term payoffs; the other is more interested in long-term value than in current gains. The two may settle on a contract in which a large lump sum is paid to the risk-averse negotiator, and the other party reaps most of the (riskier) profits in the long term.

Few conflicts are purely win or lose.[21] In most mixed-motive negotiations, parties realize that they have two incentives vis-à-vis the other party: cooperation (so that they can reach an agreement and avoid resorting to their BATNAs) and competition (so that they can claim the largest slice of the pie). However, what this analysis misses is the incentive to create value, which is the key to win-win negotiation.

[15] Fisher, R., & Ury. W. (1981). *Getting to yes*. Boston: Houghton Mifflin; Bazerman, M. H., & Neale, M. A. (1983). Heuristics in negotiation: Limitations to effective dispute resolution. In M. Bazerman & R. Lewicki (Eds.), *Negotiating in organizations* (pp. 51–67). Beverly Hills, CA: Sage; Thompson, L., & Hastie, R. (1990). Social perception in negotiation. *Organizational Behavior and Human Decision Processes, 47*(1), 98–123.

[16] O'Connor, K. M., & Adams, A. A. (1999). What novices think about negotiation: A content analysis of scripts. *Negotiation Journal, 15*(2), 135–148.

[17] Thompson & Hastie, "Social perception in negotiation."

[18] Thompson, L. (1991). Information exchange in negotiation. *Journal of Experimental Social Psychology, 27*(2), 161–179.

[19] Thompson, L. (1990). An examination of naïve and experienced negotiators. *Journal of Personality and Social Psychology, 59*(1), 82–90; Thompson, L. (1990). The influence of experience on negotiation performance. *Journal of Experimental Social Psychology, 26*(6), 528–544.

[20] Thompson, L., & DeHarpport, T. (1994). Social judgment, feedback, and interpersonal learning in negotiation. *Organizational Behavior and Human Decision Processes, 58*(3), 327–345.

[21] Deutsch, M. (1973). *The resolution of conflict*. New Haven, CT: Yale University Press.

MOST COMMONLY USED WIN-WIN STRATEGIES

The following strategies and techniques are commonly regarded by negotiators to be key in crafting win-win deals. However, their actual effectiveness is not as potent as the negotiators' belief in their effectiveness.

Commitment to Reaching a Win-Win Deal

Many negotiators approach the negotiation table committed to reaching a win-win deal. However, commitment to reaching a win-win deal does not guarantee that negotiators will reach a win-win agreement.

Compromise

Negotiators often mistake win-win negotiations for **equal-concession negotiations**. Equal concessions or "splitting the difference" does not really ensure that a win-win negotiation has been reached. Compromise pertains to slicing the pie, not expanding the pie.

Focusing on a Long-Term Relationship

Oftentimes, negotiators believe that focusing on the long-term nature of their relationship with the other party will ensure a win-win deal. Obviously, the long-term relationship is key in negotiation—and we spend an entire chapter (Chapter 6) discussing how to foster the relationship— but establishing a long-term relationship does not guarantee a win-win outcome.

Adopting a Cooperative Orientation

It is nice when negotiators approach the negotiation table with benevolent attitudes and a cooperative orientation. However, negotiators' intentions to cooperate often keep them from focusing on the right information at the right time. For example, negotiators often attempt to cooperate by revealing their BATNA to the other party. Revealing one's BATNA is a pie-slicing, not a pie-expanding, tactic. Negotiators often think cooperation means compromise, and compromises often lead to lose-lose outcomes. In an attempt to gain customer loyalty, companies often provide free or highly discounted services and products. However, the strategy of "freemiums" became a costly trap for Chargify, leading to high operating costs and thousands of freeloading customers. Chargify, a provider of billing management software, gave away its software to customers that billed less than 50 clients per month. If a customer needed to bill more than 50 customers a month, Chargify would charge the client a monthly fee. Under this model, most of Chargify's users never became paying customers and soon the company was under the threat of bankruptcy. In an effort to stop compromising on the value they gave to customers and get their company financially back on track, Chargify began charging all customers monthly fees for use of their software. The message? Don't give anything away unless you get something in return.[22] Indeed, when both parties to a negotiation hold highly relational goals or views of themselves, they are prone to **relational accommodation,** a dynamic resulting in suboptimal outcomes. This is particularly true when the organizational context focuses on egalitarian values, as opposed to hierarchical relationships.[23]

[22] Needleman, S. E., & Loten, A. (2012, August 22). When freemium fails. *Wall Street Journal*. online.wsj.com.
[23] Curhan, J. R., Elfenbein, H. A., & Kilduff, G. J. (2009). Getting off on the right foot: Subjective value versus economic value in predicting longitudinal job outcomes from job offer negotiations. *Journal of Applied Psychology, 94*(2), 524–534.

Taking Extra Time to Negotiate

Extra time does not guarantee that negotiators will reach an integrative agreement (most negotiators wait until the last few moments of a negotiation to reach an agreement). Furthermore, people tend to work to fill their time.[24] The same is true for negotiation. For example, we gave some people one hour, others two hours, and still others a week (via e-mail) to complete a two-party negotiation exercise. If time really makes a difference in terms of the quality of negotiated agreements, then the one-hour group should have inferior outcomes in terms of expanding the pie. However, this did not happen. In fact, there were no discernible differences among the three groups, which suggest that extra time does not improve the quality of negotiated agreements.

EFFECTIVE PIE-EXPANDING STRATEGIES

The following strategies can help negotiators expand the pie and create win-win negotiations.[25] We present them in terms of the most straightforward and intuitive strategies to strategies that are more sophisticated and even paradoxical. The first few strategies are especially good to use when negotiating with someone who seems cooperative and trustworthy. The strategies that come later on this list are useful when dealing with extremely tough negotiators.

Perspective Taking

By taking the perspective of the other party, negotiators attempt to see the world through the counterparty's eyes. Indeed, negotiators who take the perspective of the counterparty are more successful in terms of a number of social enterprises, such as coordinating with others.[26] Negotiators who take the perspective of the other party are more likely to avoid impasses, specifically by allowing negotiators to engage in successful logrolling (i.e., making concessions on low-preference vs. high-preference issues) compared to egoistic negotiators.[27] Perspective taking also enhances problem-solving abilities.[28] Consider the following example of losing trees in new building construction. Typically, a building site provides the required replacement trees and counties plant the trees in public parks and along streets. Due to heavy construction, Arlington County, Virginia lost numerous trees but at the same time ran out of suitable free space on public property to plant new trees. By taking the county's perspective and supporting the importance of an urban canopy, developers negotiated a program to use the tree-loss calculation for owed money instead of owed trees. Developers funded the program in which the county gave away trees to residents

[24] McGrath, J. E., Kelly, J. R., & Machatka, D. E. (1984). The social psychology of time: Entrainment of behavior in social and organizational settings. *Applied Social Psychology Annual, 5*, 21–44.
[25] Bazerman, M. H., & Neale, M. A. (1982). Improving negotiation effectiveness under final offer arbitration: The role of selection and training. *Journal of Applied Psychology, 67*(5), 543–548.
[26] Galinsky, A., Ku, G., & Wang, C. (2005). Perspective-taking: Fostering social bonds and facilitating coordination. *Group Processes and Intergroup Relations, 8*, 109–125; Galinsky, A. D., Wang, C. S., & Ku, G. (2008). Perspective-takers behave more stereotypically. *Journal of Personality and Social Psychology, 95*(2), 404–419.
[27] Trotschel, R., Huffmeier, J., Loschelder, D. D., Schwartz, K., & Gollwitzer, P. M. (2011). Perspective taking as a means to overcome motivational barriers in negotiations: When putting oneself into the opponent's shoes helps to walk toward agreements. *Journal of Personality and Social Psychology, 101*(4), 771–790.
[28] Richardson, D., Hammock, G., Smith, S., Gardner, W., & Signo, M. (1994). Empathy as a cognitive inhibitor of interpersonal aggression. *Aggressive Behavior, 20*(4), 275–289.

to plant on their private property.[29] Perspective-taking ability also enhances negotiators' ability to claim resources[30] and react effectively to the anchoring attempts of the counterparty.[31]

Perspective taking is different from empathy. Whereas perspective taking is a *cognitive* ability to consider the world from another's viewpoint, empathy is the ability to *emotionally* connect with another person.[32] Perspective taking and empathy are both useful in different types of negotiations: Perspective taking leads to more accurate understanding of other parties in negotiation, whereas empathy produces greater emotional understanding.[33] Negotiators who either are high in perspective-taking ability or are prompted to take the perspective of the counterparty are more successful in identifying and reaching integrative outcomes in negotiation. Perspective takers are more likely than empathizers to discover hidden potential, achieve maximum joint gains, and secure peace. Similarly, people who regret "not following their heart" often give up more resources than do people who regret "not following their head" because they sacrifice for the relationship.[34]

Ask Questions About Interests and Priorities

A negotiator could ask the other party any number of questions during the negotiation (see Exhibit 4-1). However, of the six types of information listed in Exhibit 4-1 only two are truly helpful types of questions to ask in terms of expanding the pie—questions about underlying interests and questions about priorities.[35] Negotiators who ask the counterparty about their preferences are much more likely to reach integrative agreements than negotiators who do not ask the other party about his or her priorities.[36] However, left to their own devices, negotiators fail to ask diagnostic questions. For example, only about 7% of negotiators seek information about the other party's preferences during negotiation, even though it would be dramatically helpful to know such information.[37]

Why are these questions diagnostic with respect to increasing the likelihood of win-win agreements? Two reasons: First, such questions help negotiators discover where the value is. Second, diagnostic questions do not tempt the other party to lie or to misrepresent himself or herself. Asking the other party about his or her BATNA or reservation price might induce him or her to exaggerate or lie, but it is not immediately clear why or how a negotiator would lie about his or her underlying needs. Thus, diagnostic questions are effective because they do not put negotiators on the defensive.

[29] Schulte, B. (2007, May 31). Sowing a different tomorrow; on a mission to restore urban canopy, Arlington distributes trees to plant on private property. *Washington Post, Virginia Extra*, p. T01.
[30] Bazerman & Neale, "Improving negotiation effectiveness under final offer arbitration."
[31] Galinsky, A., & Mussweiler, T. (2001). First offers as anchors: The role of perspective-taking and negotiator focus. *Journal of Personality and Social Psychology, 81*(4), 657–669.
[32] Galinsky, A. D., Maddux, W. W., Gilin, D., & White, J. B. (2008). Why it pays to get inside the head of your opponent: The differential effects of perspective-taking and empathy in strategic interactions. *Psychological Science, 19*(4), 378–384.
[33] Gillin, D., Maddux, W. W., Carpenter, J., & Galinsky, A. D. (2013). When to use your head and when to use your heart: The differential value of perspective-taking versus empathy in competitive interactions. *Personality and Social Psychology Bulletin, 39*(1), 3–16.
[34] Crotty, S., & Thompson, L. (2009). When your heart isn't smart: How different types of regret change decisions and profits. *International Journal of Conflict Management, 20*(4), 315–350.
[35] Bazerman, M. H., & Neale, M. A. (1992). *Negotiating rationally*. New York: Free Press.
[36] Thompson, "Information exchange in negotiation."
[37] Thompson, "Information exchange in negotiation."

EXHIBIT 4-1
Types of Information in Negotiation and How each Affects Distributive and Integrative Agreements

Type of Information	Definition (example)	Claiming Value	Creating Value
BATNA (and reservation price)	The alternatives a negotiator has outside of the current negotiation (e.g., "If I don't buy your car, I can buy my uncle's car for $2,000.")	Revealing this information severely hurts the ability to maximize negotiator surplus.	Revealing or obtaining this information does not affect ability to reach integrative agreements.
Position (stated demand)	Usually, a negotiator's opening offer; the behavioral manifestation of his/her target point (e.g., "I will give you $1,500 for your car.")	Opening with an aggressive target point significantly increases the negotiator's surplus (share of the bargaining zone).	This does not affect integrative agreements.
Underlying interests	The underlying needs and reasons a negotiator has for a particular issue (e.g., "I need a car because I need transportation to my job site, which is 15 miles away in a rural zone.")	Revealing this information generally increases the likelihood of obtaining a favorable slice of the pie because negotiators who provide a rationale for their demands are more adept at realizing their targets.	Very important for reaching win-win deals; by (truthfully) revealing underlying interests, negotiators can discover win-win agreements (e.g., one sister tells the other that she wants the orange because she needs to make juice and has no need for rinds).
Priorities	A judgment about the relative importance of the issues to a negotiator (e.g., "I am more concerned about the down payment than I am about the financing for the car.")	Increases a negotiator's surplus indirectly, because if more value is created via sharing priorities, then the probability that a negotiator will get a larger slice of the pie increases.	Vitally important for maximizing the pie (e.g., the sister who said she cared more about the rinds *relative to* the juice created potential for integrative agreement).
Key facts	Pertains to information that bears on the quality and the value of the to-be-negotiated issues (e.g., "The car has a rebuilt engine and has been involved in a major collision."; "The oranges are genetically modified.")	This information can affect the slice of the pie the negotiator obtains in that facts either increase or decrease the value of the to-be-negotiated issues.	Affects the quality of win-win agreements in that failure to reveal key information may lead a negotiator to over- or undervalue a particular resource (e.g., someone who sells "fresh organic orange juice" does not want to have genetically modified oranges as an ingredient).
Substantiation	Argument either made to support one's own position or to attack the other party's position (e.g., "You will get lots of dates if you buy my car because women like it.")	Most dominant type of distributive tactic (24% to 27% of all statements); can increase a negotiator's slice of the pie because providing a rationale (even an absurd one) can often be effective in obtaining a demand.	A distributive tactic; does not increase win-win negotiation and may, in fact, reduce the likelihood of win-win.

It is important to ask the right questions; indeed possessing information about a counterparty that is irrelevant to the negotiation task actually impairs negotiators' effectiveness because such knowledge impedes effective information exchange.[38] Negotiators who possess nondiagnostic information about an opponent are more likely to terminate the search for integrative agreements prematurely. The timing of information is important. For example, negotiators achieve greater value on an issue after they seek information about that issue as compared to when the same information is readily accessible.[39] In short, the active pursuit of information is more beneficial than the passive receipt of information.

Negotiators who express interest in their opponent's opposing viewpoints are more willing to engage in future interaction with the counterparty and are more receptive. The mere act of preparing questions that ask the counterparty to elaborate leads to more openness and positive attributions.[40] Negotiators who have high **epistemic motivation**—a personal need for structure—are more likely to reach higher joint outcomes because they ask more questions that benefit the dyad as a whole compared to negotiators who are low in epistemic motivation.[41] Moreover, negotiators high in epistemic motivation are more likely to benefit from adding and discussing more issues.[42]

Reveal Information About Your Interests and Priorities

Negotiation is a paradox because parties are expected to be honest and straightforward, but revealing too much information can put one at a disadvantage. For example, negotiators who are naturally straightforward tend to show greater concern for the other party and make more concessions, especially in purely distributive negotiations, resulting in lower profit.[43] It is a fallacy to believe that negotiators should never provide information to the counterparty.[44] Negotiations would not go anywhere if negotiators did not communicate their interests to the other party. You should negotiate as you would with your fraternal twin: Assume that he or she is as smart and as motivated as you are. Don't ask the other party a question that you are not willing to answer yourself. The important question, then, is not *whether* to reveal information but *what* information to reveal.

By signaling your willingness to share information about your interests (not your BATNA), you capitalize on the powerful principle of reciprocity: If you share information, the other party will often share as well. Negotiators who provide information to the other party about their priorities are more likely to reach integrative agreements than negotiators who do not provide this information.[45] The disclosing negotiator is not at a strategic disadvantage, as long as he or she does not reveal information about his or her BATNA or reservation price. The disclosing

[38] Wiltermuth, S., & Neale, M. A. (2011). Too much information: The perils of nondiagnostic information in negotiations. *Journal of Applied Psychology, 96*(1), 192–201.
[39] Young, M. J., Bauman, C. W., & Bastardi, A. (2012). The pursuit of missing information in negotiation. *Organizational Behavior and Human Decision Processes, 117*(1), 88–95.
[40] Chen, F. S., Minson, J. A., & Tormala, Z. L. (2010). Tell me more: The effects of expressed interest on receptiveness during dialogue. *Journal of Experimental Social Psychology, 46*(5), 850–853.
[41] Ten Velden, F. S., Beersma, B., & De Dreu, C. K. W. (2010). It takes one to tango: The effects of dyads' epistemic motivation composition in negotiation. *Personality and Social Psychology Bulletin, 36*(11), 1454–1466.
[42] Ten Velden, Beersma, De Dreu, "It takes one to tango."
[43] DeRue, D. S., Conlon, D. E., Moon, H., & Willaby, H. W. (2009). When is straightforwardness a liability in negotiations? The role of integrative potential and structural power. *Journal of Applied Psychology, 94*(4), 1032–1047.
[44] Bazerman & Neale, *Negotiating rationally.*
[45] Thompson, "Information exchange in negotiation."

negotiator does not earn significantly more or less resources than the counterparty. Negotiators are more likely to share information (about their BATNA and priorities) when the counterparty shares information and when the counterparty asks for information.[46]

Negotiators can exchange six key types of information during negotiation. The skilled negotiator knows how to recognize each. Even more important, the skilled negotiator knows what information is safe (and even necessary) to reveal to reach win-win outcomes. The information that negotiators should share is not information about their BATNAs but rather, information about their *preferences* and *priorities* across the negotiation issues. (Exhibit 4-1 outlines six types of information that negotiators can exchange. Exhibit 4-2 supplements Exhibit 4-1 by providing a worksheet to complete prior to negotiation.)

It is often useful to analyze negotiation like a football game with periods of time in quarters. During the first quarter, people are more likely to use influence strategies as they battle for power and influence. During the second quarter, priority information peaks as negotiators discuss the issues and share information about their priorities. In the third quarter, negotiators make offers and counteroffers and either support or reject them on the basis of rational argument. In the fourth quarter, negotiators begin to work toward agreement by building on each other's offers.[47]

Even though many negotiators provide information during a negotiation, the counterparty may not necessarily understand the information. This faulty assumption may be traceable to the **illusion of transparency**.[48] The illusion of transparency occurs when negotiators believe they are revealing more than they actually are (i.e., they believe others have access to information about them when in fact they do not). In one investigation, negotiators judged whether an observer to the negotiation could accurately discern their negotiation goals from their behavior.[49] Negotiators consistently overestimated the transparency of their objectives. Thus, people feel more like an "open book" with respect to their goals and interests in negotiation than they actually are. Negotiators are also not as clear in their messages as they should be. Indeed, when the information exchanged is amenable to multiple interpretations, it can lead to settlement delays and divergent expectations.[50] Conversely, when a single interpretation is obvious, information sharing leads to convergence of expectations and speeds settlement.

Unbundle the Issues

One reason negotiations fail is because negotiators haggle over a single issue, such as price. By definition, if negotiations contain only one issue (e.g., price), they are purely distributive (i.e., fixed-pie). Skilled negotiators are adept at expanding the set of negotiable issues. Adding issues, unbundling issues, and creating new issues can transform a single-issue, fixed-pie negotiation into an integrative, multi-issue negotiation with win-win potential.[51] Integrative agreements

[46] Zarankin, T. G., & Wall, J. A. (2012). Negotiators' information sharing: The effects of opponent behavior and information about previous negotiators' performance. *Negotiation and Conflict Management Research, 5*(2), 162–181.
[47] Adair, W. L., & Brett, J. M. (2005). The negotiation dance: Time, culture and behavioral sequences in negotiation. *Organization Science, 16*(1), 33–51.
[48] Gilovich, T., Savitsky, K., & Medvec, V. H. (1998). The illusion of transparency: Biased assessments of others' ability to read one's emotional states. *Journal of Personality and Social Psychology, 75*(2), 332–346.
[49] Vorauer, J. D., & Claude, S. D. (1998). Perceived versus actual transparency of goals in negotiation. *Personality and Social Psychology Bulletin, 24*(4), 371–385.
[50] Loewenstein, G. F., & Moore, D. A. (2004). When ignorance is bliss: Information exchange and inefficiency in bargaining. *Journal of Legal Studies, 33*(1), 37–58.
[51] Lax & Sebenius, *The manager as negotiator.*

EXHIBIT 4-2
Preparation Worksheet

Issue	Self	Other
Salary	position / 1 underlying interest	other party's position on this issue / other party's underlying interest
Signing Bonus	3	
Job title	4	
Stock options	2	
Company car	5	
Reservation price		
Target		
BATNA		

Instructions:

1. In the far-left column, identify the issues to be negotiated.
2. Then, indicate your "position" in the top part of the triangle and your underlying interest in the lower part of the triangle in the middle column.
3. Next, rank-order the issues from most to least important (using, say, 1 through 5 in the small boxes).
4. Next, make your best assessment of the other party's position, interests, and priorities across the issues.
5. Indicate your reservation price (and attempt to assess the reservation price of the other party).
6. Indicate your target point.
7. Indicate your BATNA (and attempt to assess the other party's BATNA).

Source: Based on Brett, J. (2007). *Negotiating globally: How to negotiate deals, resolve disputes, and make decisions across cultural boundaries* (2nd edition), San Francisco: Jossey-Bass, p. 17.

require at least two issues. The World Trade Organization was formed by 159 member countries in an effort to reform the international trading system and create a comprehensive global trade agreement. However, progress in reforming international trade rules was at a standstill for five years due to strict adherence to "the single undertaking" principle: Nothing can be agreed upon

unless everything is agreed upon by all the members. By unbundling the issues related to trade facilitation, members were able to reach an agreement in 2013.[52]

Logrolling and Value-added Trade-offs

Once negotiators have brainstormed their issues and interests, they can potentially trade off issues in a win-win fashion, such that each negotiator is able to make gains on issues they regard as the most important in exchange for making concessions on lesser-valued issues. As a case in point, consider a value-added trade-off at a global level between the United States and China regarding scrap metal. Because China is still a developing economy, they don't throw away enough stuff (e.g., old cars, computers, furniture, turbines, you name it) to be self-sufficient. For the last decade, China has imported more than 70% of the scrap copper it uses. Conversely, the United States throws away more scrap metal than it can possibly use and is quickly filling up landmines. Thus, the U.S. scrap metal market has become very attractive to the Chinese buyer. Americans care about recycling and preserving resources and their most important interest is the knowledge that low-grade scrap metal will end up in a landfill if it is not exported. Chinese businessman Johnson Zheng of Sunrise Metal Recycling is more than happy to pay $1 per pound for something that contains products priced at 60¢–$2.20 per pound in China.[53] Thus, the United States and China are able to reach a win-win deal because one party values the scrap metal more than the other party.

Make Package Deals, Not Single-Issue Offers

Most negotiators make the mistake of negotiating each issue independently of others. This approach is a mistake for several reasons: First and foremost, negotiating each issue separately does not allow negotiators to make trade-offs between issues. To capitalize on different strengths of preference, negotiators need to compare and contrast issues and trade them off. Second, it may mean that impasse is more likely, especially if the bargaining zone is narrow and trade-offs are necessary to reach a mutually profitable outcome. Single-issue offers lure negotiators into compromise agreements, which as we have seen, are usually not the best approach for win-win negotiations.

In 2010, a major and potentially crippling strike was neatly avoided between Pratt Whitney and its Machinists union by crafting a package deal. The company's main goal was to eliminate 500 jobs, close two plants, and move operations overseas; hardly what union workers wanted. However, Pratt packaged its key interests (closures and job eliminations) in a deal that did not include layoffs, added 75 jobs at the Middletown assembly plants for workers at the targeted facilities, provided a generous early-retirement program, set wage increases of 3% in the first year along with a $3K signing bonus, and provided job security for workers outside of the targeted facilities. In 2013, the company agreed to a $1 billion deal with the Pentagon for a fifth series of F-35 fighter jet engines. This package deal created thousands of additional jobs, including jobs in Middletown, CT.[54]

[52] Holland, T. (2013, December 12). To boost business, WTO must ditch "all or nothing" approach. *South China Morning Post*. scmp.com; Walker, A. (2013, December 7). WTO agrees global trade deal worth $1tn. *BBC News*. bbc.co.uk.

[53] Minter, A. (2013, August 29). To a Chinese Scrap-Metal Hunter, America's Trash is Treasure. *Bloomberg Businessweek*. businessweek.com.

[54] Pratt & Whitney Company, Union reach win-win agreement that avoids strike. (2010, December 7). *The Hartford Courant*. courant.com; Pratt & Whitney announces $1 billion pentagon deal (2012, May 30). International Association of machinists and aerospace workers. goiam.org.

Make Multiple Offers of Equivalent Value Simultaneously

In some cases, negotiators are disappointed and frustrated to find that their attempts to provide and seek information are not effective. Can negotiators do anything to change the situation? Fortunately, the answer is yes. The strategy of making **multiple offers of equivalent value simultaneously** (or MESOs) can be effective even with the most uncooperative of negotiators.[55] The MESO strategy involves presenting the other party with at least two (and preferably more) proposals of *equal value* to oneself. For example, in the Walmart negotiation discussed in Exhibit 4-3, the Sequim county engineer, Don McInnes responded to the planning director's protests by outlining three different options: (a) widening three roads to a standard 40-foot width, (b) bringing the roadways up to a higher standard (but not to full standard) through a major overhaul, and (c) creating a cul-de-sac at two of the roads.[56]

The multiple-offer strategy is threefold:

1. ***Devise multiple-issue offers,*** as opposed to single-issue offers (to get away from sequential bargaining, which can lock people into lose-lose outcomes).
2. ***Devise offers that are all of equal value to yourself*** (leaving yourself many ways to get what you want before making a concession).

> ### EXHIBIT 4-3
> **Walmart's Construction Plans**
>
> The mayor of Sequim, Washington, and Walmart's attorney fired verbal shots at the county as the appeals hearing for approving Walmart's construction plans concluded. Shortly thereafter, appeals were filed by the Clallam County Department of Community Development, the Jamestown S'Klallam Indian Tribe, and the community group, Sequim First, to block the city planning director from allowing a Walmart complex to be built in the small town of Sequim (fewer than 5,000 people). The groups opposed to the new 575,000-square-foot shopping center complex argued that the Walmart would create a traffic nightmare, causing "unsafe driving conditions" on the roads, and the storm-water runoff (from all the concrete and pavement) would put toxins in the city's rivers and streams; they argued that the impact could cause anywhere between a 280% and 500% increase in traffic. And they wanted Walmart to pay—in advance—something to the tune of $100 million to fix the roads. However, Walmart and the mayor of Sequim viewed these protests as a thinly veiled ploy to squeeze a "deep pocket to pay for [the city's] neglect [of its roads]." According to Walmart and the mayor, the county's road maintenance around Sequim had been downright negligent and the county had not kept up the roads. A Walmart analysis of the same roads predicted only a 7% traffic increase. For a while it appeared to be a standoff, and the two sides seemed to be working off completely different data. Then a breakthrough solution was proposed by Mayor Walt Schubert: An independent body would conduct an analysis of possible traffic impacts on the country roads, and Walmart would give the city up to $100,000 if substantial traffic impacts were proven through the independent study. Through this plan, the Walmart could be built and the city could have money to fix the roads.
>
> *Source:* Ross, D. (2003, July 9). Walmart united against county during hearing. *Sequim Gazette,* pp. A1, A5.

[55] Leonardelli, G. J., Gu, J., McRuer, G., Galinsky, A., & Medvec, V. H. (manuscript under review). Negotiating with a velvet hammer: Multiple equivalent simultaneous offers. *Organizational Behavior and Human Decision Processes.*

[56] Ross, D. (2003, July 30). County proposes mall traffic solution. *Sequim Gazette,* p. A7.

3. ***Make all the offers at the same time.*** This last point is the hardest for most people to do because they negotiate like playing tennis: They make one offer and then wait for the other party to "return" a single offer; then they make a concession, and so on. In the multiple-offer strategy, a negotiator presents a "dessert tray" of offers to the other party and invites a response. *Note:* The other party should be cautioned that cherry picking (e.g., selecting the terms from each option that most suit a negotiator) is not permissible. Rather, the offers are truly package deals.[57]

Negotiators who make multiple equivalent offers enjoy more profitable negotiated outcomes and are evaluated more favorably by the other party.[58] Specifically, they are seen by the other side as being more flexible, and they are more satisfied at the end of the negotiation. Multiple offers increase the discovery of integrative solutions.[59] MESOs also serve as a more "sticky" anchor than do stand-alone offers in the sense that the counterparty views MESOs to be more cooperative and legitimate as compared to single-issue or single-package offers.[60]

Negotiators who make multiple, equivalent offers have an edge in five critical aspects: They can: (a) be more aggressive in terms of anchoring the negotiation favorably, (b) gain better information about the other party, (c) be more persistent, (d) signal their priorities more effectively, and (e) overcome concession aversion on the part of the other side.[61] However, there are some important cautionary considerations to keep in mind when making multiple offers.[62] As noted earlier, the negotiator should not allow the counterparty to "cherry pick" the best parts of different offers. It is important for negotiators to make assertive offers and not risk giving all the gains to the other party.

BE AGGRESSIVE IN ANCHORING Consider how Ken Alex, an attorney at a major international law firm, negotiated a business news database.[63] For the law firm, the database was critical and renewal was necessary. Not doing so would mean a lot more research librarian time, and recent staff cutbacks had reduced the number of librarians. The amount the firm paid for the renewal in the previous year was $52,000. Alex had budgeted $58,000 for this year's renewal. Alex's strategy was to use the simultaneous multiple-offer strategy. Because he knew that one of the key issues for the database service was the contracted value of the database, he reasoned that a two-year contract with a major firm would be quite valuable for the database company. Moreover, signing up for two years was a low-risk strategy for him because he was confident that the firm would want the database again next year. Moreover, it also would represent budget

[57] Schatzki, M., & Coffey, W. R. (1981). *Negotiation: The art of getting what you want.* New York: New American Library.

[58] Leonardelli, Gu, McRuer, Galinsky, & Medvec, "Negotiating with a velvet hammer"; Leonardelli, G. J., Medvec, V., Galinsky, A. D., & Claussen-Schulz, A. (manuscript under review). Building interpersonal and economic capital by negotiating with multiple equivalent simultaneous offers. Under review at *Organizational Behavior and Human Decision Processes.*

[59] Hyder, E. B., Prietula, M. J., & Weingart, L. R. (2000). Getting to best: Efficiency versus optimality in negotiation. *Cognitive Science, 24*(2), 169–204.

[60] Leonardelli, G. J., Gu, J., McRuer, G., Galinsky, A., & Medvec, V. H. (manuscript under review). Negotiating with a velvet hammer: Multiple equivalent simultaneous offers. *Organizational Behavior and Human Decision Processes.*

[61] Medvec, V. H., & Galinsky, A. D. (2005). Putting more on the table: How making multiple offers can increase the final value of the deal. *HBS negotiation newsletter, 8*(4), 4–6.

[62] Brett, J. M. (2014). *Negotiating globally: How to negotiate deals, resolve disputes, and make decisions across cultural boundaries* (3rd ed.). San Francisco, CA: Jossey-Bass.

[63] Personal communication. (2002, December 4). Names have been altered.

certainty for the firm in highly volatile times. Alex made two proposals that he called A and B. Proposal A was a 1-year renewal at $45,000; proposal B was a 2-year renewal for $43,000 for year 1 and $47,000 for year 2. Ultimately, the database company opted for proposal B, the 2-year renewal.

GAIN BETTER INFORMATION ABOUT THE OTHER PARTY The multiple-offer strategy is based on the strategy of **inductive reasoning**, meaning that a negotiator can deduce what the other party's true interests are and where the joint gains are. (We present more about inductive, as well as deductive reasoning in Chapter 8 in a discussion of advanced negotiations and creativity.) By listening to the opponent's response, the negotiator learns about the other party's preferences. Thus, the negotiator thinks like a "detective" by drawing conclusions based on the counterparties' responses to the multiple offers.

BE PERSISTENT AND PERSUASIVE REGARDING THE VALUE OF AN OFFER Consider how the multiple-offer strategy helped a team at a major pharmaceutical firm maintain ground in a particularly tense negotiation.[64]

> The situation was a divestiture, and we had an issue surface from our side (regarding much more inventory than was originally estimated), a significant surprise that appeared as if we had provided incorrect information at the due diligence stage. The issue was of a very significant magnitude relative to the size of the deal (meaning that they would have to pay a higher amount in some very significant way).

The pharmaceutical firm proposed five options, all of equivalent value, that involved various trade-offs between deferred payment terms, cash on close, and not taking some of the inventory, among other options. The team made the five proposals and then held their collective breath. "We had already had multiday tirades on issues of who owned the pencil sharpeners, so we were braced for the worst attacks." The other team calmly said, "We understand," and the very next day selected one of the options. The pharmaceutical team members reflected, "If we had taken the single-option approach, their obvious position would have been to say 'That is your problem, you misled us... provide us with the excess inventory for free.'" However, this potential deal killer was avoided and the deal closed much more successfully than ever anticipated.

OVERCOME CONCESSION AVERSION When people perceive themselves as having more choices (as opposed to only one), they may be more likely to comply. When President Barack Obama and Russian President Vladimir Putin engaged in a stand-off over the use of chemical weapons by the Syrian government on its own people, both leaders found that conceding to a common goal was preferable to flexing military muscle. In this way, an agreement was brokered for the Syrian government—an ally of Russia but not of the United States—to dispose of all chemical weapons stockpiles.[65]

[64] Personal communication. (2003, September 14).

[65] Hoffman, E. C. (2013, September 10). Making frenemies with Putin. *Reuters*. reuters.com.

Structure Contingency Contracts by Capitalizing on Differences

Negotiators not only have differences in interests and preferences but they also view the world differently.[66] A supplier may believe that the sales will be high; the vendor may believe they will be more modest. Different interpretations of the facts may threaten already tenuous relations. Attempts to persuade the other person may be met with skepticism, hostility, and an escalating spiral of conflict. Differences in beliefs—or expectations about uncertain events—pave the way toward integrative agreements. For example, in the Walmart negotiation presented in Exhibit 4-3, the parties had widely differing beliefs about the impact the shopping complex would have on local traffic, with the city estimating a 500% increase in traffic and Walmart estimating only 7%. Given these differing predictions, it is somewhat ironic to think they might be leveraged to create a workable solution. In fact, it is differences, rather than commonalities, that can be more advantageous in negotiations.[67] The enlightened negotiator realizes that differences in beliefs, expectations, and tastes can create greater value. Most people are uncomfortable when they encounter differences, and, instead of leveraging this opportunity, they either downplay their differences or ignore them.

Negotiators can exploit differences to capitalize on integrative agreements in a variety of ways.[68] Consider the following differences and the opportunities they create:

- Differences in the valuation of the negotiation issues
- Differences in expectations of uncertain events
- Differences in risk attitudes
- Differences in time preferences
- Differences in capabilities

DIFFERENCES IN VALUATION Negotiators have different strengths of preference for each issue. For example, in a negotiation for scarce office space, one person is more interested in a large office than a nice view; the other negotiator is more interested in a view than having extra space. They reach an agreement in which one person gets a large, windowless office and the other gets a small office with a great view. The strategy of trading off so as to capitalize on different strengths of preference is known as **logrolling**.[69]

DIFFERENCES IN EXPECTATIONS Because negotiation often involves uncertainty, negotiators differ in their forecasts or beliefs about what will happen in the future. Consider the case of a woman and her brother who inherited a tool store from their father.[70] The sister expected the profitability of the store to decline steadily; the brother expected the store to succeed. The sister wanted to sell the store; the brother wanted to keep it. A contingent contract was constructed: The brother agreed to buy his sister's share of the store over a period of time at a price based on her bleak assessment of its worth. The sister is guaranteed a certain return; the brother's return is based on the success of the store.

[66] Lax & Sebenius, *The manager as negotiator*.

[67] Lax & Sebenius, *The manager as negotiator*.

[68] Lax & Sebenius, *The manager as negotiator*.

[69] Froman & Cohen, "Compromise and logroll."

[70] Personal communication. (1993, April).

DIFFERENCES IN RISK ATTITUDES In other situations, negotiators agree on the probability of future events but feel differently about taking risks.[71] For example, two colleagues may undertake a collaborative project, such as writing a novel for which they both agree that the probability of success is only moderate. The colleague with an established career can afford to be risk-seeking; the struggling young novelist may be risk-averse. The two may capitalize on their different risk-taking profiles with a contingent contract: The more risk-averse colleague receives the entire advance on the book; the risk-seeking colleague receives the majority of the risky profits after the publication of the novel. Negotiators who have a **gain frame** (i.e., see the glass as half full) are more likely to logroll or trade off issues in a win-win fashion; conversely, those with a **loss frame** (i.e., see the glass as half empty) are more likely to accept a contingent contract.[72]

DIFFERENCES IN TIME PREFERENCES People may value the same event quite differently depending on when it occurs.[73] If one party is more impatient than the other, mechanisms for optimally sharing the consequences over time may be devised. Two partners in a joint venture might allocate the initial profits to the partner who has high costs for time, whereas the partner who can wait will achieve greater profits over a longer, delayed period.

DIFFERENCES IN CAPABILITIES People differ not only in their tastes, probability assessments, and risk preferences; they also differ in their capabilities, endowments, and skills. Consider two managers who have different resources, capital, and support staff. One manager has strong quantitative skills and access to sophisticated technology; the other has strong marketing and design skills. Together, they may combine their differing skills and expertise in a mutually beneficial way, such as in the design of a new product concept. The development of successful research collaborations is fostered by differences in skills and preferences.[74]

CAUTIONARY NOTE Capitalizing on differences often entails **contingency contracts**, wherein negotiators make bets based upon different world occurrences. For contingency contracts to be effective, they should satisfy the following four criteria: First, they should not create a *conflict of interest*. For example, if a production company, optimistic about sales, negotiates a contingency contract with a venue such that rental fees will be contingent upon sales, the contract should not create an incentive for the production company to attempt to thwart sales. Second, contingency contracts should be *enforceable* and therefore often may require a written contract. Third, contingency contracts should be *clear, measurable, and readily evaluated*, leaving no room for ambiguity. Conditions and measurement techniques should be spelled out in advance.[75] Further, a date or time line should be mutually agreed upon. Finally, contingency contracts require *continued interaction* among parties. We go into more detail about contingency contracts in Chapter 8.

[71] Lax & Sebenius, *The manager as negotiator*.
[72] Kray, L. J., Paddock, L. E., & Galinsky, A. D. (2008). The effect of past performance on expected control and risk attitudes in integrative negotiations. *Negotiations and Conflict Management Research, 1*(2), 161–178.
[73] Lax & Sebenius, *The manager as negotiator*.
[74] Northcraft, G., & Neale, M. A. (1993). Negotiating successful research collaboration. In J. K. Murnighan (Ed.), *Social psychology in organizations: Advances in theory and research*. Upper Saddle River, NJ: Prentice Hall.
[75] Bazerman, M. H., & Gillespie, J. J. (1999). Betting on the future: The virtues of contingent contracts. *Harvard Business Review, 77*(5), 155–160.

Presettlement Settlements (PreSS)

Presettlement settlements (PreSS) have three characteristics: They are *formal*, in that they encompass specific, binding obligations; *initial*, because they are intended to be replaced by a formal agreement; and *partial*, in that the parties do not address or resolve all outstanding issues.[76] PreSS's involve more than a simple handshake or "gentleman's agreement." Rather, a PreSS occurs in advance of the parties undertaking full-scale negotiations and is designed to be replaced by a long-term agreement. A PreSS resolves only a subset of the issues on which the parties disagree (i.e., partial). In some cases, instead of resolving any of the outstanding issues, a PreSS may simply establish a concrete framework for final negotiations. For example, reaching a workable agreement between U.K. broadcasters and independent producers over who owns the rights to broadcast TV shows across broadband and mobile platforms could have taken up to a year. Therefore, a quick resolution to generate revenue from new audiences was crucial for both partners. The parties agreed to negotiate an interim code of practice deal before the consensus on a final agreement.[77]

Consider the 1993 Oslo Accords between Israel and Palestine.[78] The Oslo Accords sought to establish an incremental process of negotiation and reciprocation that would lead to what both parties termed "final-status" talks. The parties agreed to wait to resolve the most difficult issues (e.g., borders, settlements, Jerusalem) until the final-status talks. As an initial step, the Israelis and Palestinians sought to resolve less difficult issues, thereby establishing a political dialogue and working toward formalized relations. For example, the Israelis agreed to release female prisoners, transfer disputed money, and withdraw from Hebron. The Palestinians agreed to revise their national charter, transfer suspected terrorists, and limit the size of the Palestinian police force. The PreSS framework has subsequently floundered in this situation due to heated rhetoric and escalating violence. (For another type of PreSS, see Exhibit 4-4.)

EXHIBIT 4-4
NO-FIST (Normal Operations with a Financial Strike)

Lax and Sebenius suggested a unique type of presettlement settlement (PreSS) in a letter written to the editor of the *Wall Street Journal*. They cautioned that a planned strike by American Airlines pilots would result in the airline incurring revenue losses of more than $200 million per day. To avoid such a lose-lose outcome, they recommended the following: Once the strike seemed imminent and negotiations reached impasse, the parties should agree to continue normal business operations, but place some or all of their revenues and salaries into an escrow account controlled by a trusted outside entity. By continuing operations but accruing escrow money—no matter how the escrow fund is eventually divided—both parties will inevitably be better off compared to a typical strike situation. In this sense, NO-FIST promotes a Pareto-superior outcome for all concerned parties, including pilots, shareholders, customers, and nonpilot airline employees.

Source: Based on Lax, D. A., & Sebenius, J. K. (1997, February 24). A better way to go on strike. *The Wall Street Journal*, Section A, p. 22.

[76] Gillespie, J. J., & Bazerman, M. H. (1998). Pre-settlement settlement (PreSS): A simple technique for initiating complex negotiations. *Negotiation Journal, 14*(2), 149–159.
[77] Jones, G. (2006, March 2). Pact warns solution to digital media rights could take a year. *NMA Magazine*, p. 4.
[78] Gillespie & Bazerman, "Pre-settlement settlement (PreSS)."

Search for Postsettlement Settlements

In the postsettlement settlement technique, negotiators reach an initial settlement that both agree to but spend additional time attempting to improve upon (each from their own perspective). In the **postsettlement settlement strategy**, negotiators agree to explore other options with the goal of finding another option that both prefer more than the current one, or that one party prefers more and to which the other is indifferent.[79] The current settlement becomes both parties' new BATNA. For any future agreement to replace the current one, both parties must be in agreement; otherwise, they revert to the initial agreement. It may seem counterintuitive and perhaps downright counterproductive to resume negotiations once an acceptable agreement has been reached, but the strategy of postsettlement settlements is remarkably effective in improving the quality of negotiated agreements.[80]

Because they can safely revert to their previous agreement, the postsettlement settlement strategy allows both parties to reveal their preferences without fear of exploitation. If better terms are found, parties can be more confident they have reached an integrative agreement. If no better agreement is found, the parties may be more confident that the current agreement is pareto-optimal.

A STRATEGIC FRAMEWORK FOR REACHING INTEGRATIVE AGREEMENTS

The discovery and creation of integrative agreements is much like problem solving, which requires creativity. Integrative agreements are devilishly obvious after the fact but not before. Because negotiation is an ill-structured task, with few constraints and a myriad of possible "moves," a sure fire strategy for reaching integrative agreement does not exist. Look at the decision-making model of integrative negotiation in Exhibit 4-5. The model is prescriptive; that is, it focuses on what negotiators *should* do to reach agreement, not what they *actually* do. The model has five major components: resource assessment, assessment of differences, construction of offers and trade-offs, acceptance/rejection of a decision, and renegotiation.

Resource Assessment

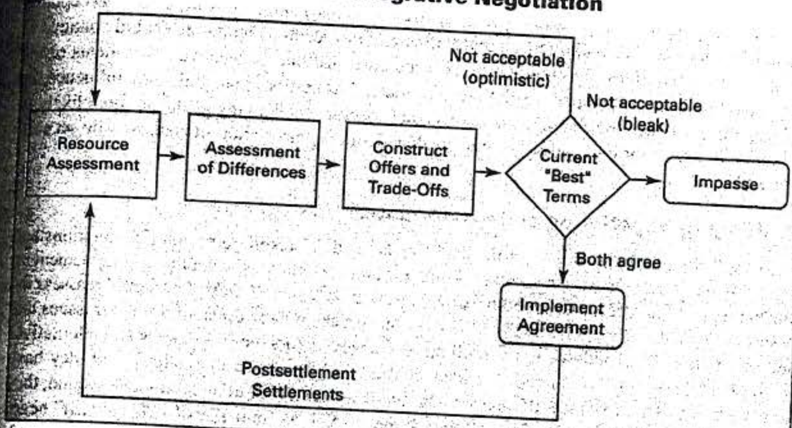
Resource assessment involves the identification of the bargaining issues and alternatives. For example, consider an employment negotiation. The bargaining issues may be salary, vacation, and benefits. In this stage, parties identify the issues that are of concern to them in the negotiation. A superset emerges from the combination of both parties' issues.

The union of both parties' issues forms the **issue mix** of the negotiation. In addition to specifying the issue mix, parties also define and clarify the alternatives for each issue. The ultimate set of options for each issue is a superset of both parties' alternatives.

Later stages of resource assessment move beyond the mere identification of issues and alternatives to more sophisticated processes, namely the **unbundling** of issues and alternatives and the addition of new issues and alternatives. Unbundling issues is important in negotiations that center around a single issue. Because mutually beneficial trade-offs require a minimum of

[79] Raiffa, H. (1982). *The art and science of negotiation.* Cambridge, MA: Belknap.
[80] Bazerman, M. H., Russ, L. E., & Yakura, E. (1987). Post-settlement settlements in two-party negotiations. *Negotiation Journal, 3*(3), 283–292.

EXHIBIT 4-5
Decision-Making Model of Integrative Negotiation



two issues, it is important to fractionate conflict into more than one issue. In other instances, it may be necessary to add new issues and alternatives. The process of adding issues and alternatives is facilitated by discussing parties' interests.[81]

Assessment of Differences

Once the issue mix is identified, we should focus on assessing their differences in valuation, probability assessment, risk preferences, time constraints, and capabilities.[82] Each party should focus on its most important issues. Negotiators' most important issues are their interests; the other issues are secondary. When negotiators are psychologically distant from one another, they focus on secondary issues more than their primary interests, which facilitates integrative agreement when trade-off potential resides in these issues.[83]

Offers and Trade-Offs

In this phase, parties should consider several potential trade-offs among valuations, forecasts, risks, time preferences, and capabilities, and eliminate those dominated by other alternatives. Parties should focus on issues that are of high value to one party and of low cost for the other party to provide. It makes no sense to pursue a trade-off unless what you are offering is more valuable to the other party than what it costs you to provide.

[81] Lax & Sebenius, *The manager as negotiator.*
[82] Lax & Sebenius, *The manager as negotiator.*
[83] Giacomantonio, M., De Dreu, C. K. W., Shalvi, S., Sligte, D., & Leder, S. (2010). Psychological distance boosts value-behavior correspondence in ultimatum bargaining and integrative negotiation. *Journal of Experimental Social Psychology, 46*(5), 824–829.

Acceptance/Rejection Decision

At some point, negotiators may identify a set of terms that both find minimally acceptable and exceeds both parties' reservation points. However, identification of a minimally acceptable agreement does not necessarily mean that settlement is efficient. Negotiators should continue to explore the possibilities, depending on their time costs and their subjective assessments of the likelihood of reaching a superior solution. Negotiators' aspirations and goals may influence the search process in negotiation; negotiators who set specific, challenging goals are more likely to continue to search for integrative agreements than do those who do not set goals or who set easy goals.[84]

Prolonging Negotiation and Renegotiation

Two feedback loops emanate from the decision stage: the decision to prolong negotiations and the decision to renegotiate. Negotiators should prolong negotiations when the best agreement at the bargaining table fails to meet both parties' reservation points. Negotiators should reassess the resources by unbundling the initial set of issues and breaking them down into smaller issues that may be traded off. In addition to unbundling issues, negotiators may add issues and alternatives to the bargaining mix. If parties have identified all the issues and alternatives, and they have identified differences to trade off, and yet a mutually agreeable solution has not been found, they should call a halt to the negotiation and pursue their BATNAs. In the heated "fiscal cliff" negotiations between President Barack Obama and the congressional Republican leadership in 2012, parties threatened one another to pursue their BATNAs. Republicans and Democrats retreated to their relatively weak BATNAs, which was to delay negotiations while the country headed over the fiscal cliff. The impasse dragged on throughout 2013.[85]

CONCLUSION

Virtually all negotiators want to reach integrative (or win-win) agreements; however, most negotiators fail to do so, resulting in money and resources being left on the table. In reality, people are usually not aware that their negotiation outcomes are inefficient. The key reasons for lose-lose outcomes are illusory conflict and the fixed-pie perception. The successful creation of win-win negotiation deals involves: perspective taking; asking questions about interests and priorities; providing the counterparty with information about your priorities and preferences (not your BATNA!); unbundling issues; making package deals (not single-issue offers); making multiple offers simultaneously; structuring contingency contracts that capitalize on differences in negotiators' beliefs, expectations, and attitudes, and using pre- and postsettlement settlement strategies. In their attempts to expand the pie, negotiators should not forget about claiming resources.

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[84] Huber, V. L., & Neale, M. A. (1986). Effects of cognitive heuristics and goals on negotiator performance and subsequent goal setting. *Organizational Behavior and Human Decision Processes, 38*(3), 342–365.

[85] Top 10 negotiation stories of 2012. (2012, December 21). *Program on Negotiation at Harvard Law School.* pon.harvard.edu.

5 Part II: Advanced Negotiation Skil

DEVELOPING A NEGOTIATING STYLE

In April 2013, North Korean president Kim Jong-Un threatened nuclear strikes against the Unite States, causing an international crisis and speculation about the mental health of this inexperience 30-year-old leader. Some analysts suggested he might suffer from a personality disorder. However other analysts argued that Jong-Un's behaviors were completely rational in that the survival of hi dictatorship depends on maintaining a sense of threat from the outside world and empowering hi impoverished people with images of military dominance and nuclear vengeance against the country' sworn enemies. Psychologists liken Jong-Un to Napoleon, the self-crowned Emperor of France wh plunged Europe into war, and point out that his swaggering, tyrannical behavior would have bee regarded as completely normal among European monarchs—several centuries ago. As a youngster Kim Jong-Un made friends in school and is by all measures intelligent, good at math albeit lazy i studying, fiercely competitive, and can't stand losing. After making the threats about nuclear strikes Jong-Un strategically toned down his vitriol in a carefully orchestrated show of posturing.[1]

The opening example illustrates that negotiators often appear to be unstable a highly irrational, but are in fact highly strategic. In this chapter, we consider h negotiators' personalities and styles affect negotiation.

Negotiators often choose between one of two completely different negotiati styles: being tough or being soft.[2] The tough negotiator is unflinching, makes hi demands, concedes little, holds out until the very end, and often rejects offers that a within the bargaining zone. In contrast, the soft negotiator typically offers too ma concessions, reveals his or her reservation point and is so concerned that the other pa feels good about the negotiation that he or she gives away too much of the bargaini zone. About 78% of MBA students describe their style as "cooperative"; 22% descri themselves as "aggressive."[3] However, neither approach is particularly effective f expanding the pie. The tough negotiator often walks away from potentially profitab interactions and gains a reputation for being stubborn. The soft negotiator agrees t readily and never reaps much of the bargaining surplus. Moreover, negotiators w

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[1] Robertson, I. (2013). Sane man, insane bind. *Psychology Today*, pp. 29–30.

[2] Bazerman, M. H., & Neale, M. A. (1992). *Negotiating rationally*. New York: Free Press.

[3] Lewicki, R. J., & Robinson, R. J. (1998). Ethical and unethical bargaining tactics: An empirical study. *Journ of Business Ethics, 17*(6), 665–682.