Distributive Bargaining

The negotiation model known today as distributive bargaining was first identified by R. E. Walton and R. B. McKersie in their seminal work on negotiation theory, *A Behavioral Theory of Labour Negotiations.* In their work they defined the differences between distributive bargaining and integrative bargaining in the field of labor-management relations. (Integrative bargaining will be discussed in Chapter 4.) Today both terms are commonly used in all discussions of negotiation theories and processes. Distributive bargaining is a negotiation method in which two parties strive to divide a fixed pool of resources, often money, each party trying to maximize its share of the distribution. Distributive bargaining is a fixed-sum game, and the limited resource is often termed a fixed pie. It is also called a zero-sum process because one party loses whatever amount is gained by the other. For example, if a seller is paid $1,000 (and thus realizes a $1,000 gain), then a buyer has paid the same amount (and realizes a $1,000 loss)—and the sum of the two is zero. Distributive bargaining is described as win-lose bargaining because whatever one side gains comes at the expense of the other party—what is “won” by one is “lost” by the other. It is also sometimes referred to as hard bargaining because it is usually a highly competitive process designed to reach a formal written agreement, such as a purchase contract. Probably the most easily identified example of distributive bargaining would be the sale or purchase of a big-ticket item such as a house or a car.

The general nature of distributive bargaining is highly competitive and the objective of the parties involved is to maximize their share of the fixed resource. As a result, both parties may use a variety of tactics including making threats, concealing their true objectives, misrepresenting information—or even lying and utilizing leverage or power if they perceive it is balanced in their favor. A common example in labor relations would be a union threatening to strike when it perceives that management cannot afford the loss of production.
Why is it necessary for all negotiators to be prepared to use and/or respond to distributive bargaining tactics? The basic reason is that, for many novice as well as some experienced negotiators, distributive bargaining is the heart of negotiation. For them, the word *negotiation* brings to mind the classic car-buying situation: a single-deal negotiation in which only one issue (price) is key, and both sides view the transaction as a zero-sum game. Thus, many negotiators will view any situation as distributive and therefore will use distributive strategies and tactics, even though it may not best serve their long-term interests.

In general, the distributive bargaining model is identified by three components: (1) the parties involved view each other as *adversaries*; (2) the objective of both parties is to *maximize their self-interest* or their “share of the pie”; and (3) they are *only concerned about the current negotiation*, interacting with each other as though they have no past relationship and expect no future relationship—and thus are willing to use tactics they might not use if they had a continuing relationship. It is important to recognize, however, that sometimes the parties do have a past and a future relationship—as in labor-management contract negotiations—but they use the distributive model in spite of this fact and bargain strictly as adversaries, trying to get a maximum “share of the pie,” seemingly unmindful that in later months or years they may suffer from the retaliatory tactics of the other party, who has been waiting to “even the score.”

**Negotiation Skills**

In this chapter we present five negotiation skills that can be learned and developed by the novice negotiator, and applied to the end-of-chapter Learning Exercise, “Buying a House.”

**Skill 3.1** Recognize a distributive bargaining situation by the three key components and therefore prepare to utilize appropriate strategies and tactics to reach a desired settlement.

**Skill 3.2** Begin by determining a reservation price to prevent “the heat of the moment” from causing you to agree to an unacceptable offer.

**Skill 3.3** Learn how to use bracketing of the other party’s offer to achieve your desired outcome in a distributive negotiation.

**Skill 3.4** Recognize and use common social norms and accepted practices to evaluate offers, make counteroffers, and reach a settlement point.

**Skill 3.5** Learn the important role of framing offers to influence how others perceive and respond to offers.
CHAPTER CASE: BUYING A WORK OF ART

Chris Comte is an artist with studios in Morro Bay, California, and Cincinnati, Ohio. She has built a following of admirers in southern California and in Ohio and is considered to be very talented by those who collect her paintings. Many of her works have appeared in magazines such as *Southern Living* and *San Luis Obispo Magazine* and have been purchased and displayed in many prominent locations including art galleries, courthouses, and private collections. However, like most struggling artists, she always needs to sell her works for a fair price to pay the bills. One of her favorite (and she believes one of her best) paintings is of two young women dressed in their finest Sunday white outfits, sitting in a rowboat on a sunny, lazy August afternoon, with a beautiful wildflower garden behind them. The painting is simply titled *Sunday*. A retired couple from Texas is vacationing in the area for a few days and by chance stop in the studio. While browsing they pause to admire *Sunday*. The next day they decide to return to the studio and possibly buy the painting. The listed price is $12,500. The buyers believe they cannot afford to pay the asking price, and have decided to offer $7,500, knowing that artists often negotiate the price of their works. It is a classic distributive bargaining situation. The only real issue is price. Both parties would like to make a deal, but both also know they can walk away from the deal.

**CLASSIC DISTRIBUTIVE BARGAINING SITUATION**

The classic distributive bargaining situation is one that everyone has experienced. The issue is the sale of a piece of furniture, an automobile, or perhaps, as in the Chapter Case, a work of art. The buyer and seller do not know each other, and do not expect to have any meaningful future relationship. The only issue to be negotiated is price. The goal of the buyer is to minimize the price, and the goal of the seller is to maximize the price. Both view the situation as win-lose bargaining. It is important to consider that in most such distributive bargaining situations, there actually is no “fair” or “best” price. What is a house worth? It's worth whatever price the two parties will agree upon.

Howard Raiffa, in his classic book *The Art and Science of Negotiation*, provides an analytical model of this classic distributive bargaining situation. Raiffa explains that when the two parties enter discussion, each has some idea of what they consider to be their *reservation price*—the absolute minimum price that the seller will accept or the absolute maximum price that the buyer is willing to pay. Let’s call the seller’s reservation price $s$ and the buyer’s reservation price $b$. What happens if negotiators do not decide their reservation price before the negotiation begins? They will be at a real disadvantage because they may easily agree to what they will later admit to being too much or too little because they were “caught up in the heat of the negotiation.” Unfortunately this is not a rare situation.

The reservation prices can also be thought of as the BATNA of each party, as we discussed in Chapter 2. For sellers, the BATNA or $s$ is the price at which they will
simply continue to seek another buyer, and for buyers the BATNA or $b$ is the price at which they will look for another car to buy. If $b$ is larger than $s$—that is, if the buyer’s maximum price is greater than the seller’s minimum price—then there exists a **zone of possible agreement (ZOPA)**, also called the **bargaining range**, **negotiating latitude**, or **settlement range** because any offer outside of the range will be quickly rejected by one of the parties. The ZOPA exists because the buyer is willing to meet or exceed the seller’s minimum price.

However, the mere existence of a positive ZOPA does not guarantee that an agreement will be reached. After all, negotiators do not usually share with each other their reservation prices and thus may not realize that a range of possible settlement prices exists, and in fact they may not reach agreement if they are poor negotiators. Also consider what happens if $s$ is greater than $b$. Then the seller’s minimum acceptable price is higher than the buyer’s maximum price, and thus no ZOPA exists, and no agreement can be reached. The distributive bargaining situation can be represented as illustrated in Figure 3.1.

In Figure 3.1, the seller, of course, wants $X$ to be the highest possible price, or as close as possible to $b$, and the buyer wants $X$ to be the lowest possible price, or as close as possible to $s$. However, during negotiations both parties are only aware of two values: their own reservation price and the proposed value of $X$. So how do they negotiate a final price? Typically, in a distributive bargaining situation, they enter into the **negotiation dance** with one party making an opening offer, the other party responding with a counteroffer, and then possible multiple counteroffers, until an agreement price, $X$, is reached—which will be somewhere between the two reservation prices, within the zone of possible agreement.

An interesting finding by negotiation researchers is that all things being equal, such as the negotiation abilities of the two parties, each point in the ZOPA has an equal probability of becoming $X$, the final agreement price. In the real world, of course, all things are seldom equal. One or more of several factors may enable one party to negotiate a final price, $X$, that is more favorable to them and thus closer to their reservation price.

One critical piece of information that can provide a distinct advantage is the **reservation price of the other side**, or how eager the other party is to reach an agreement. For example, a husband and wife are negotiating to buy a pleasure boat they found on the Internet. The seller listed the price as $35,000 in the ad—but, unknown to the buyers, has decided he will take $28,000 (reservation price). Upon inspecting the boat in person, the wife offers $25,000. The seller declines and the husband and wife begin haggling over the good and bad points of the boat. They discuss, in front of the seller, other boats they found online, and how far they would need to travel to inspect them. The husband keeps saying, “This is the nicest one we’ve seen.” The seller

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**Figure 3.1** Classic Distributive Bargaining Model

| 0  | $s$  | $X$  | $b$  | $\$ Dollars$
|----|------|------|------|-------
| $s$ = Seller’s reservation price  
| $b$ = Buyer’s reservation price  
| $X$ = Negotiated price or final agreement |
senses they are eager to make a deal, so he responds with: “I’m willing to come down to $33,000 if we can close the deal today.” The buyers counter with an offer of $32,000, which is accepted. The seller in fact is just as motivated as the buyers, if not more motivated, but their discussion gave him the sense they were very eager to buy—information that allowed him to lower his price by only $2,000 and gain a settlement price of $4,000 more than his reservation price.

Another important factor is the opening offer, which can often be critical in the negotiations that follow. In the example just cited, the seller’s opening offer was $7,000 above his reservation price and gave him room to negotiate downward, thus appearing to compromise. In his second offer he reduced his opening offer by $2,000 instead of raising their opening offer by $2,000, which would have been an equal movement. However by saying “I’m willing to come down” he based his counteroffer on his opening offer—a tactic that was critical to reaching a higher final price.

A third important factor is the skill of the negotiator. Negotiators who prepare in advance and successfully utilize commonly practiced negotiation tactics will reach agreements that are more favorable to them. The tactic that the seller used in our example was a simple but important one: He listened and learned about the circumstances of the other party. Experienced negotiators realize that careful listening to the other party during negotiations may enable them to determine the true interests of the other party, and thus give them valuable information. Negotiation scholar Kathleen L. McGinn compares this important negotiation skill to that of improvisational jazz musicians who practice with other musicians for hours every day, listening carefully to notes, scales, chords, and progressions. After much practice they can begin to improvise to create exhilarating new music. Skilled negotiators, like jazz musicians, are to a degree improvisational because they “play it by ear” and skillfully listen to the interests, needs, and concerns expressed by the other party and then, based on that information, make adaptations in the negotiations to their advantage. McGinn believes that negotiators can develop their improvisation skills by seeking out, recognizing, and then utilizing three types of information during a negotiation:

1. **Relational information:** Facts, beliefs, and feelings about the relationships between the parties. For example, when asked “How can I trust that this is your best price?” a manager responded by showing the buyer his company price list. This information helped build a relationship as well as gain the sale.

2. **Substantive information:** Facts, pertinent data, and questions about the other party’s offer, utilizing reason and logic. For example, the seller of a house asked the buyers why their latest offer was an odd number ($183,256), when their previous offers were nice round numbers ($170,000 and $180,000). The buyers responded by showing the seller a form with their bank’s approved loan limit, saying “We really want this house, but this is the maximum amount the bank will loan us under their first-time-owner plan—if you can’t accept it, we have to keep looking.” The owner accepted the offer because she was convinced the form was legitimate and appreciated their sharing the information.

3. **Procedural information:** Open discussion of the negotiation process that helps understand and manage the process. For example, at the start of the annual round of labor contract negotiations between the city and nine unions, one
union president informed the city’s new chief negotiator, “Don’t bother setting
information sessions with us—no matter what we tell our members, we are not
in a hurry, and in fact will not engage in serious negotiations until the city has
settled with all the other unions.” Then, true to his word, the union negotiator
accepted the city’s opening offer that day but refused suggestions that they
meet again—for 11 months, until the city had settled with all the other unions.
Once they did meet again, they settled on a new contract in less than 30 days.
By first explaining the process his union would follow, the president provided
valuable procedural information that gave the city negotiator a realistic expecta-
tion of the process and helped maintain a positive relationship.

**Opening Offers**

At this point we will expand upon the discussion of the two party, single-issue dis-
tributive bargaining situation presented in Chapter 2. The single-issue negotiation
situation is the most common, and the one issue to be negotiated is usually price. As
we discussed earlier in this chapter, both parties begin by determining their reservation
prices. The next critical step is for one side or both sides to make an initial open-
ing offer. Keep in mind that they are concealing their resistance points—defined as
the seller’s minimum price (or BATNA) and the buyer’s maximum price (or
BATNA). Experienced negotiators appreciate the critical importance of the opening
offers. They realize that novice negotiators, such as the ones in the accompanying
cartoon, may simply accept an opening offer and not really negotiate. Once opening
offers are made the bargaining begins. Opening offers can easily determine the
nature of the bargaining and greatly affect the settlement value.

**Anchoring**

Opening offers can easily determine the nature of the bargaining and greatly affect
the settlement value by effectively setting the outer limits of the bargaining. No

**Zits**

Inexperienced negotiators may simply accept an opening offer, or make a counteroffer that is
very close—thus in reality “accepting” the opening offer of the other party.

Source: Zits is syndicated by King Features Syndicate, Inc. Used by permission.
buyer will pay more than the asking price, and no seller will accept less than the buyer’s lowest offer. Therefore, many experienced negotiators often prefer to make the opening offer and thus anchor the discussion at their chosen point. Still other negotiators prefer to have the other party make the first opening offer. Once they have the other side’s opening offer they can adjust their own opening offer to keep their desired outcome in the middle of the two opening offers. Negotiation researchers have shown that people irrationally fixate on the first number put on the table in a negotiation—the offer becomes an anchor for the following negotiations, regardless of how arbitrary it may be. In fact, research shows that even when people know that the anchor has little or no relevance, it still influences their decision making. This curious phenomenon is illustrated in Figure 3.2.

Experienced negotiators therefore know that the first offer on the table, especially in situations of great uncertainty, can substantially influence the other party’s perception of the ZOPA, and thus the outcome of the negotiation. Remember that in fact there are two ZOPAs—each side estimates the ZOPA based on its own reservation point and the reservation point it guesses has been set by the other party. If an opening offer causes the other party to change its perceived ZOPA, then the negotiator has anchored the bargaining in a most effective manner.

Negotiators often make opening offers with one of three types of anchors:7

1. **Facts:** “My agent told me no house in this neighborhood with this square footage has sold for more than $350,000.”

2. **Extreme offer:** “I believe highly experienced CPAs like myself can command a $95,000 salary in this region.”

3. **Precedent:** “My last supervisor always gave me the highest possible rating, in all 12 categories.”

The first offer clearly anchors the negotiation discussions. Who, then, should make the first offer? By what mechanism does an anchor affect even experienced negotiators who believe they are immune to such influence? According to anchoring research

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**Figure 3.2  The Power of Random Numbers**

In an experiment on the effects of anchoring, Daniel Kahneman and Amos Tversky spun a wheel marked with random integers ranging from 0 to 100. Participants were then asked whether they thought that the percentage of UN member countries from Africa was greater than or less than the number just spun on the wheel. Participants were then asked for their best estimate of the proportion of UN member countries that were from Africa.

For one group of the subjects, the wheel stopped at 10. The vast number of these subjects said that the proportion of the UN member countries that were from Africa was more than 10%; on average, they guessed that the actual percentage was 25%.

For another group of the subjects, the wheel stopped at 65. Almost all of these participants said that the proportion of the UN member countries that were from Africa was less than 65%. In contrast to the first group, this group’s average guess was that 45% of UN member countries were from Africa.

The only difference between the two experimental conditions was the number on the wheel, yet the groups’ best estimates differed by 20 percentage points! The purely random number the subjects were given by the wheel dramatically—and irrationally—anchored their assessments.


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by Adam D. Galinsky of Northwestern University, the answers can be found in the fact that all items on the table have both positive and negative qualities, and a high anchor may direct the negotiators’ attention to the positive qualities. In addition, those making the first offer are more likely to have confidence in their position. By contrast, the lack of an aggressive first offer to anchor the discussions leaves you with only two unappealing options—make small concessions to the other party’s opening offer, or stand by your positions and appear to be uncompromising.8 And a word of caution: If the other party begins with an extreme opening offer, it may be a trap (see Box 3.1).

**Bracketing**

Once the opening offers are made the real haggling process, often called *bracketing*, occurs. Bracketing is the logical bargaining process of moving toward a middle point between the opening offers, or brackets.9 Consider, for example, the negotiation described in the Chapter Case, “Buying a Work of Art,” as illustrated in Figure 3.3. The seller listed the price at $12,500 and the buyers approached the seller with an opening offer of $7,500. The two sides then began bargaining in the bracket range between the opening offers ($7,500–$12,500). In general, negotiators should “bracket” their initial offer, or initial counter, about the same distance away from

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**BOX 3.1 Traps to Avoid**

**How to Respond to an Extreme Opening Offer**

How should you respond to an extreme opening offer—which might set an anchor in favor of the other party? Keep in mind that an unrealistic opening offer is often simply a tactic employed by the other side, not an insult. The other party simply is trying to lower your expectation, and in the process establish its extreme offer as an anchor point. Negotiators are especially likely to use this tactic if they believe you may end up agreeing to split the difference between your reasonable offer and their extreme offer. Thus you should first recognize their extreme offer for what is it—and quickly dismiss it with a response such as “Outrageous!” or “Ridiculous—$11,000 is not in the ballpark!” The goal is to get them to abandon the possibility that their offer will be considered at all in the ensuing negotiations. Then quickly follow up with your own opening offer based on facts or a defensible position. For example: “The Blue Book on this vehicle is $18,500, and that is for a car in average condition. This one has low mileage and is in excellent condition, so I believe $20,500 is a fair price. Now what is your offer?” With this response, you accomplished two important objectives—first, you dismissed their extreme offer, effectively removing it as a potential anchor, and then you focused the discussion on your price by basing your offer on facts.

Bracketing can be used in small deals and large deals. For example, Roger Dawson suggests that if a car dealer is asking $15,000 and you want to pay $13,000, make an opening offer of $11,000. Dawson also cites an example of how bracketing was used in a large deal—the 1982 international loan between the governments of Mexico and the United States. The two sides first agreed that Mexico would pay off its $82 billion loan with oil. Then Federal Reserve Chairman Paul Volcker and Treasury Secretary Donald Regan asked Mexico to pay a $100 million negotiating fee—which is a politically acceptable way of paying accrued interest. Mexico’s President José López Portillo balked at the idea and said he would not pay any negotiating fee—zero dollars. Thus he bracketed the deal with his “zero dollars” counter, and the two sides agreed to a fee of $50 million.10

Thus if the other side makes the first offer, a good response strategy is to bracket the negotiation, and possibly end up splitting the difference, as is often the case, and therefore getting your desired objective. That is why some negotiators, when they believe the other party is inexperienced, want the other party to make the first offer—so they can bracket the negotiation. Real estate agents, when counseling clients, commonly apply bracketing. For example, a house is listed for $370,000 and potential buyers ask their agent, “What offer should we make?” They already told the agent they don’t want to go over $350,000 on any house. Thus the agent responds, “Offer them $330,000, and let’s hope they counter with $360,000. and then you can counter with $350,000.”

In the Chapter Case, if the buyers’ goal is to purchase the painting for no more than $9,000, then instead of an initial offer of $7,500 they should make a more extreme opening offer of $5,500—creating a midpoint of $9,000. Both sides have already decided their reservation price or BATNA; the seller will not accept less than $8,000, a minimum profit on the item, and the buyers decided that $11,000 is their absolute limit to spend on any item. Obviously, in most negotiations, both sides do not reveal their reservation prices. The distance between the two therefore becomes the ZOPA because any agreed-to final price will be between these two points, which are the limits each party has determined.
The final negotiated settlement price \((X)\) usually will be a point approximately in the middle of the two opening offers (if each side accepts the other’s opening offer as reasonable), because although the opening offers are known, the reservation prices have not been revealed. In the Chapter Case example, for instance, the midpoint is $10,000. If the final price is larger than the midpoint, say $11,000, then the seller perceives a “negotiated gain” of $3,500 and the buyers perceive a “negotiated gain” of only $1,500. (The seller would have haggled for $3,500 more than the buyers’ opening offer of $7,500, but the buyers would have realized only a $1,500 drop from the seller’s opening offer of $12,500.) Neither wants to realize a smaller negotiated gain than the other side, and thus both sides often move to a price near the midpoint.

Inexperienced negotiators may be hesitant to set the opening offer higher or lower just to create a desirable midpoint, for fear of offending the other party. A critical novice mistake! The best strategy is to allow for adequate negotiating room between the two initial positions by proposing an opening offer that both anchors your position and provides an acceptable midpoint. However, prepare a logical argument to give your offer credibility, or else it may be ignored by the other side and thus does not function as an anchor. A strong defense of the initial offer can achieve two objectives: (1) it convinces the other party that the offer has merit, and (2) it begins to call into question the credibility of the other party’s opening offer. In fact the other party may begin to question its own position and thus be more willing to move toward your opening offer.11

If you must give the first opening offer, or choose to do so for strategic reasons, then you should choose the most extreme offer that you can logically defend and carefully gauge the reaction. If the other side quickly makes is own opening offer—either very close to yours or extremely far from yours—be ready to walk away and reassess the situation. If their opening offer is very close to yours, then ask yourself if you set your offer too conservatively. If their offer is extremely far from yours, then it may be difficult to reach an acceptable midpoint. Either case may cause you to walk away or break off negotiations. Perhaps the worst scenario of an opening offer is when the other side quickly accepts your offer. This situation is called the winner’s curse—you achieve your offer, but you are “cursed” with worry over why they quickly accepted your opening offer without even proposing a counteroffer!

## The Role of Norms

Once each party has determined its reservation price and the two parties have exchanged initial offers, now they must arrive at a price somewhere in the range between the two initial offers. This situation represents the basic distributive bargaining question—how to distribute the possible gain available to both parties. How do the negotiators proceed? What motivates them to make a particular counteroffer, or accept or reject a counteroffer made by the other party? Negotiations seldom take place in a vacuum. Instead they are often guided by social norms and accepted practices that are based on the context of the situation. The two negotiators in this situation might proceed according to one or more common norms, which research and theory indicate, will most likely guide their behavior.
Table 3.1 How Norms Can Be Used to Support an Offer, or Evaluate a Counteroffer

<table>
<thead>
<tr>
<th>Norm</th>
<th>How Negotiator Utilizes the Norm</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Relational</td>
<td>Desires to maintain a positive long-term relationship</td>
</tr>
<tr>
<td>2. Fairness</td>
<td>A. Equality: Evenly splits the difference between offers (50-50)</td>
</tr>
<tr>
<td></td>
<td>B. Equity: Splits the difference between offers based on proportional inputs of the parties</td>
</tr>
<tr>
<td></td>
<td>C. Need: Splits the difference between offers based on proportional perceived needs of the parties</td>
</tr>
<tr>
<td></td>
<td>D. Status quo: Leaves the current situation unchanged</td>
</tr>
<tr>
<td>3. Reciprocity</td>
<td>Responds to a counteroffer or action with one of equal value</td>
</tr>
<tr>
<td>4. Good faith bargaining</td>
<td>Will (1) honor and not retract an offer, (2) meet and discuss issues, (3) make sincere proposals, and (4) provide honest information and share sources of information</td>
</tr>
</tbody>
</table>

In general, there are four major types of norms that might influence a negotiator’s behavior: (1) relational norms, (2) fairness norms, (3) reciprocity norms, and (4) good faith bargaining. Table 3.1 provides a summary of each norm and the basis upon which a negotiator will use it to develop or react to a proposal.

**Relational Norm**

In a negotiation situation the parties may be involved in a strictly win-lose relationship, as described earlier in this chapter. They are concerned only with maximizing their outcomes. However, in many real-world situations the parties often have a communal relationship—they are family, friends, neighbors, or may have a continuing business or organizational connection. Organizational cultures, like national cultures, can produce shared ideas and practices—causing negotiators to seek the maintenance of long-term positive relationships even as they seek to maximize their outcomes when negotiating. This desire is referred to as a relational norm and can easily cause tension between the desire to maximize outcomes and the desire to maintain a positive relationship.

Research on relational motives and norms indicates that, when present in a negotiation situation, such norms can cause negotiators to overlook maximum outcomes in favor of suboptimal or less efficient trades that are viewed as providing a more satisfying relationship. Perhaps the most extreme application of relational norms occur in romantic relationships among “negotiators” whose concern for the relationship far exceeds the desire to achieve maximum exchange outcomes. O. Henry’s classic 1905 story “The Gift of the Magi” describes the extreme romantic relational situation in which a young couple each sacrifice their most prized possession, only to receive in return something that has no practical value.12 O. Henry, however, might argue that the couple made the wisest possible relational exchange (see Figure 3.4).

Why are relational norms important? Too often people, especially novice negotiators, view a negotiation situation in a purely exchange mode or one-time interaction,
without regard for the future relationship between the parties. Therefore their objective is to win at all costs, to maximize the gain in a purely distributive bargaining context. This one-time “car-buying” situation may indeed be valid in many negotiation situations, but in many other situations it is not a valid assessment because the parties have a future relationship, at least to some extent. Organizational examples of relational norms include the common ones between managers, suppliers, co-workers, and vendors. Two major organizational developments in the past 20 years have contributed to the increased importance of relationships in negotiations: First, “flatter organizations”—those with fewer levels between president and the entry level—have become more common. Within flatter organizations, employees are given greater decision-making autonomy, and thus are increasingly empowered to negotiate with others within the organization. Second, organizations have become more inclined to develop partnerships with suppliers and other outside organizations, and therefore are more inclined to maintain long-term relationships. Due to these developments both within and between organizations, relational norms are more important today than in the past, primarily for three reasons:

1. Future negotiations with the same party are often anticipated, and therefore negotiators will seek to avoid harming the future relationship between the parties (see Box 3.2). Thus the relational norm effectively moderates the exchange relationship.
2. People from other organizations expect negotiated “favors” to be repaid at a later date.
3. Trust is critical to a long-term relationship, so agreements must include less nitpicking, fewer what-ifs or contingency clauses. A higher level of trust is expected.

**Fairness Norm**

According to Richard Shell, professor of legal studies and management and academic director of the Wharton Executive Negotiation Workshop, the negotiation process involves one of human nature’s most basic psychological drives: the need to
Chapter 3 Distributive Bargaining

Psychologists call this need to appear reasonable “the consistency principle.” Negotiations of all types provide situations in which people seek consistency due to the high level of uncertainty. The use of a norm to provide consistency in a bargaining

BOX 3.2 Traps to Avoid

How to Avoid Harming Future Relationships

How can you avoid harming a future relationship with the other party by appearing to be greedy in a current deal? Alternatively, can you give up too much in the current negotiation for the sake of preserving a positive long-term relationship? Negotiating expert Danny Ertel provides three useful tips for negotiating exchange issues for maximum gain while also not harming future relationships.

The first tip is to clearly separate the issues of “the deal” from the issues of “the relationship.” A strong relationship is built largely on trust, and thus the parties when negotiating will share information freely—and therefore can mutually identify issues that might harm the relationship. However, sometimes negotiators pay too much attention to the relationship, and therefore give away too much in the deal. On the other hand, if they push for the best possible deal they may jeopardize their side’s ability to do business with the other party in the future. Ertel recommends that at the start of a negotiation the parties categorize the issues, for example:

Deal Issues

1. Price and volume discounts
2. Service and maintenance agreements
3. Equipment replacement due to obsolesce
4. Termination clause
5. Delivery specifics

Relationship Issues

1. Specific mutual long-term goals
2. Individual personal interests (CEO, officers, and so forth)
3. Specific areas for future collaboration
4. Mutual desire to maintain trust and respect, open communication

A second useful tip for maintaining a positive relationship during negotiations is to continually ask for feedback from the other party: “Is everything happening as you expected?” or “Did this agreement include all the points of interest to your company?”

The third suggestion is to negotiate using FOTE (see Chapter 2)—full, open, truthful exchange of issues, information, and positions. Total communication can improve the level of trust and therefore help build a positive relationship.


Box 3.2 Traps to Avoid

How to Avoid Harming Future Relationships

How can you avoid harming a future relationship with the other party by appearing to be greedy in a current deal? Alternatively, can you give up too much in the current negotiation for the sake of preserving a positive long-term relationship? Negotiating expert Danny Ertel provides three useful tips for negotiating exchange issues for maximum gain while also not harming future relationships.

The first tip is to clearly separate the issues of “the deal” from the issues of “the relationship.” A strong relationship is built largely on trust, and thus the parties when negotiating will share information freely—and therefore can mutually identify issues that might harm the relationship. However, sometimes negotiators pay too much attention to the relationship, and therefore give away too much in the deal. On the other hand, if they push for the best possible deal they may jeopardize their side’s ability to do business with the other party in the future. Ertel recommends that at the start of a negotiation the parties categorize the issues, for example:

Deal Issues

1. Price and volume discounts
2. Service and maintenance agreements
3. Equipment replacement due to obsolesce
4. Termination clause
5. Delivery specifics

Relationship Issues

1. Specific mutual long-term goals
2. Individual personal interests (CEO, officers, and so forth)
3. Specific areas for future collaboration
4. Mutual desire to maintain trust and respect, open communication

A second useful tip for maintaining a positive relationship during negotiations is to continually ask for feedback from the other party: “Is everything happening as you expected?” or “Did this agreement include all the points of interest to your company?”

The third suggestion is to negotiate using FOTE (see Chapter 2)—full, open, truthful exchange of issues, information, and positions. Total communication can improve the level of trust and therefore help build a positive relationship.

situation can give a negotiator what Shell calls “normative leverage.” Negotiators who correctly anticipate the other party’s norm and therefore frame their proposal within that context can gain an advantage.14

Negotiation researchers have concluded that the fairness norm may be the most commonly employed norm. It includes four major variations: (1) the equality norm, which negotiators often call the “50-50” or “split-the-difference” (which certainly sounds fair since both sides gain an equal amount, but is really fair only if the initial offers were equally fair to both parties, which is highly unlikely); (2) the equity norm, or a split based on the proportional input of the parties; (3) the need norm, which can be a powerful social norm; and (4) the norm of maintaining the status quo, which keeps all significant issues in their current state. Figure 3.5 provides an example of how the fairness norm works.

To illustrate the first three of these fairness norms, consider three adult children who must decide how to divide the estate of their parents. Only three items of value remain. The most valuable of these is a new Mercedes-Benz; the other two items are a set of dining room furniture and a kitchen table and chairs. One child proposes they sell the items and split the proceeds 33-33-33, thus utilizing the equality norm. A second child notes that she provided the majority of the care for the parents over the last several months, and thus she believes she has earned the Mercedes. She is utilizing the equity norm. The third child explains how her car has more than 200,000 miles and is constantly in the shop, and therefore she could really use a new car. Therefore she is utilizing the need norm.

A fourth fairness norm employed by some negotiators and arbitrators is maintaining the status quo.15 Many labor contracts, for example, leave most current provisions unchanged, although a few key ones are negotiated. It’s not always assumed that the status quo is fair, but if things were accepted and used once, then they may work again. And sometimes it’s easier not to change something than to try to reach an agreement on a new proposal.

In the employer–employee relationship, what is commonly termed the equity principle is actually just the fairness norm—in this case, the equity norm variation—at work. The equity norm is based on the work of J. Stacey Adams,16 who found that employees compare the ratio of their own organizational outcomes/inputs to the perceived ratios of other employees’ outcomes/inputs—where outcomes include pay, recognition, bonuses, and so forth, and inputs include factors such as work effort, hours, and ideas. If employees perceive the ratios to be roughly equal, then they experience job satisfaction. However, if they perceive the ratios to be unequal, then they feel unfairly treated by the employer and will usually attempt to balance the ratios by seeking an increase in the outcomes received or, more likely, reducing their inputs or work effort, or even looking for another job. Thus the employee equity norm is quite similar to the fairness norm in a negotiation situation, except that the other party is the employer. Both are generally based on one of the cornerstones of Western culture—fair treatment. Religious, political, and labor organizations have often worked hard to achieve equity or fairness in our society. Issues such as gay marriage or discrimination based on race, religion, or age are often framed in terms of fairness or equity.

It is important to note that the common use of fairness norms in negotiations should not be confused with what is the “right,” “best,” or “fairest” solution. A fairness
Figure 3.5 Fairness Norm Example

Individuals in our society, when faced with a distributive decision as discussed in this chapter, often apply the “fairness norm.” This can be demonstrated easily with a group of individuals of almost any age from 8 to 80. The following exercise usually utilizes a group of 24 or more. It often leads to a lively conversation of the participants’ definition of fairness and the norms they apply in bargaining.

Exercise 1

Begin by choosing something of minimum value that can be easily divided into two parts, such as Snickers candy bars. Divide the participants into two groups (group A and group B) of equal size, and if possible locate the groups in separate rooms. In each room ask everyone to select a partner. Distribute a Snickers bar and a knife to one volunteer from each pair and provide this instruction: “Divide the Snickers into two parts of any size. Keep one part for yourself and give the other to your partner, but don’t eat them until I tell you.” Then inspect each pair of divided bars and determine how many are approximately of equal size, and how many were divided into one part larger than the other.

Then in the second room, with group B, repeat the exercise, but this time give the volunteers this instruction: “Fairly divide the Snickers into two parts. Keep one for yourself and give the other to your partner, but don’t eat them until I tell you.” Again, inspect each pair of divided bars and determine how many are of approximately equal size.

Now bring the groups together and explain what just took place in each room. Did most of the volunteers in group A divide the Snickers bars into two parts of approximately equal size, even though your instruction was to divide them into two parts of any size? Did most of the volunteers in group B follow your instruction to “fairly” divide the Snickers bars into two parts of approximately equal size as well? If the volunteers in group A (the control group) are like most people, they choose to split the bars into approximately equal size, just like the volunteers in group B who were instructed to “fairly” divide the bars. Why? Ask the volunteers to explain their action. The explanation offered by most people is that even though the volunteers in group A were told “any size,” they chose to divide the bars into approximately equal size because they wanted to be fair! This is a demonstration of how the fairness norm affects behavior when individuals are in a distributive situation.

Exercise 2

A possible discussion point of the first exercise is the value of the good to be distributed. Some may posit that the value of a Snickers is too small to cause participants to slight their partners by dividing the bar unequally. To further explore the fairness norm, raise the value. The volunteers would be asked to distribute something of more value, such as a hypothetical $10,000 bonus from their employer, given to a group of employees who worked without an accident for the prior year. Volunteers would divide the bonus into portions of “any size,” keeping one portion for themselves and distributing the other portions to the other group members. Volunteers in the control group would be asked to divide the bonus “fairly.” Then of course the critical question for the group to discuss is: “Does raising the value change the outcome? Why or why not?”

As a variation, to possibly change the outcome, ask each volunteer to divide the $10,000 bonus among a group of three employees, one of whom only worked half the year while the others worked the entire year. In this scenario volunteers usually apply the fairness norm of equity, and the employee who worked only half the year will usually receive half as much as the other two employees.
ways: (1) Making decisions based on a norm such as fairness is easier than making decisions on offers that are randomly tossed out. (2) An offer based on a norm is more persuasive than an arbitrary number, and thus more likely to receive serious consideration. (3) It is easier to agree to the other party’s offer if it is based on a norm, because you are agreeing to a principle, not a pressure tactic. For example, would you find it easier to agree to “That is my final offer—it’s what I want, and I don’t have to explain it!” or “I can’t lower the price any more—it’s already $2,000 less than what we sold the last one for, and I matched your concession, which I think is only fair, so do we have a deal?”

Reciprocity Norm

The reciprocity norm, or the human tendency to respond to the actions of others with equal or similar actions, is a third major type of norm. Someone who believes that “an eye for an eye” is the most reasonable response to another party is applying the reciprocity norm. For example, a seller who drops her price by $2,000 may expect the buyer to counter with a $2,000 higher offer. At the negotiation table, a single act of hostility—or one of respect and cooperation—can be responded to with like action, and start an ongoing cycle that can last for years, even after the individuals who initiated it are long gone. Such cycles, which often grow from a perception of hostility or unfairness, can become vicious. Alternatively, they can be positive or virtuous if the negotiation process itself is perceived to be fair and the outcomes are perceived to be fair. Such cycles are often perpetuated by other human behaviors, including (1) naïve realism—when people assume their view of the world, and only their view, reflects reality, (2) confirmatory bias—when people tend to seek only information that confirms their original position or belief, and (3) accuser bias—when we tend to hold someone who has harmed us once excessively responsible for other actions. These human tendencies cause the cycles of vicious or virtuous behavior to be perpetuated, and the reciprocity norm to be practiced.

Good Faith Bargaining

Good faith bargaining is a fourth major type of norm, and in a negotiation situation generally means that people expect certain behaviors from the other negotiators, including the following:

1. They will honor what they propose in bargaining; they do not retract an offer once made and accepted, and if necessary they sign written agreements.
2. They are willing to meet together, at reasonable times and places, to discuss issues.
3. They are willing to make proposals on each of the issues at hand.
4. They will engage in a process of give-and-take or compromise.
5. They provide only honest information, and if necessary will share their sources of information.

It is important to realize that in most negotiation situations, however, there are no legal or prescribed rules for good faith bargaining, and unfortunately reasonable people can disagree as to exactly what behaviors define “good faith.” Thus, one
Chapter 3 Distributive Bargaining

A party may feel that the other has violated the rules of good faith bargaining, and discussions can be prematurely terminated. Why? It is often said that a negotiator's greatest asset is integrity. Few negotiators will continue to meet with someone they no longer trust to be negotiating in good faith, since they cannot expect to reach an agreement, or if one is reached, they fear it will not be implemented as negotiated.

Workplace collective bargaining in the United States is a specialized negotiation situation that involves representatives from labor and management—an example of the good faith bargaining norm in action. The National Labor Relations Act of 1935 and its amendments require the representatives to meet at reasonable times and confer in good faith on issues such as wages, benefits, hours, and working conditions. This requirement includes active participation with an intention to reach an agreement and to sign binding agreements on mutually acceptable terms. It does not however, require either party to make a concession or agree to a proposal.

**Counteroffers**

Returning to the Chapter Case, the buyers and the seller of the work of art (refer again to Figure 3.3) will draw upon one or more of the negotiation norms just discussed as a basis for making counteroffers to the other party and for evaluating the counteroffers received. In addition, during this give-and-take process they may choose to utilize one or more of the common negotiation tactics described in Chapter 2. As you recall, these tactics include (1) making extreme or even ridiculous opening offers—designed to cause the other side to question its own opening positions; (2) claiming limited authority to make concessions; (3) using emotional outbursts such as shouting, cursing, name-calling, and even walking out in a huff as part of a posturing strategy; (4) offering few concessions, they view concessions as a sign of weakness, and thus offer few themselves, and seldom offer a concession not even in return when concessions are made by the other side; (5) resisting deadlines and using time as their ally, preferring a delayed settlement if it gains something, however small, for their side; and (6) waiting to counter after receiving an offer (see Box 3.3).

In time, the buyers and the seller in our Chapter Case (refer again to Figure 3.3) agreed upon a negotiated price, \(X\), that fell within the ZOPA of $8,000–$11,000 and thus met the reservation price of both parties. Exactly which price a party accepts often depends on how the offer is framed when it is presented.

**Framing Positions**

After identifying the issues to be negotiated, the next step in the preparation process is to carefully “frame” each issue (or group of issues)—that is, decide exactly how the issue will be presented to the other side in a context that is convincing. Framing is recognized as a key variable in the negotiation process because how an offer is framed has a significant impact on how it will be viewed by the other party. In general, the framing of a position refers to the wording and context of the offer. The art
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After receiving the opening offer from the other party—or in fact any offer—a good tactic is to wait before responding. Why? A response delivered too quickly may cause the other party to think you did not seriously consider the merits of their offer, and may even appear that you are belittling them. Waiting a respectful amount of time to respond, even if you never had any intention of accepting their offer, will make your opponent feel better about the process. After waiting a respectful period of time, you can reject the offer, or even better, respond with, “We have considered your offer and would like to propose that you consider this counteroffer …” This tactic of waiting to respond to an offer shows a level of respect for the other party—and can help both parties reach an agreement.


**BOX 3.3 Tactics for Success**

**Wait to Counter**

After receiving the opening offer from the other party—or in fact any offer—a good tactic is to wait before responding. Why? A response delivered too quickly may cause the other party to think you did not seriously consider the merits of their offer, and may even appear that you are belittling them. Waiting a respectful amount of time to respond, even if you never had any intention of accepting their offer, will make your opponent feel better about the process. After waiting a respectful period of time, you can reject the offer, or even better, respond with, “We have considered your offer and would like to propose that you consider this counteroffer …” This tactic of waiting to respond to an offer shows a level of respect for the other party—and can help both parties reach an agreement.


of framing positions, offers, and counters is considered one of the key negotiation skills that must be learned by the novice negotiator.

Why is framing so important? Noted mediator Theodore Kheel explains that while the facts and numbers in a proposal are important, people often attach significant meaning to words, which therefore affects their view of the proposal. Kheel cites an interesting example in U.S. history. One Gallop survey taken the day after President Bill Clinton confessed his affair with Monica Lewinsky used traditional wording: “Now I’d like to get your opinion about some people in the news. As I read the name, please say if you have a favorable or unfavorable opinion of this person …” The result was 55% favorable, 42% unfavorable. Yet another Gallop survey on the same day used different wording: “Now thinking about Bill Clinton as a person, do you have a favorable or unfavorable opinion of him?” The result was 40% favorable, 48% unfavorable. Two polls taken on the same day by the same professional polling organization, with different wording, which therefore framed the question differently, produced significantly different results.

One example of framing that received national attention occurred in the O. J. Simpson murder trial. The prosecution chose to frame the trial as “O. J. Simpson the wife-beater v. The female victim,” while the defense chose to frame the trial as “O. J. the ethnic minority victim v. The racist police force”—the frame accepted by the jury that acquitted him.

People often view the same issue quite differently, especially when they sit across from each other in negotiations. They naturally bring different perspectives, expectations, biases, and experiences to the table. How should an issue be framed? First, consider each issue simply as a point of disagreement between the parties. Issues may focus on procedures—exact payment method, the timing of delivery, and so forth—or on content—price, contract length, quantity. In general you can frame an issue in a slanted manner that puts your position in the best possible light (“A fair price is $20,000 because that is the book value”), or in a nonjudgmental manner that states the issue as a question and invites the parties to search for a solution (“How can we objectively estimate a fair price?”). This latter method of framing is less
antagonistic and moves discussions toward a process of creative problem solving if both parties are open to using it. Herb Cohen suggests that issues should be presented in terms of three critical elements:

1. **Information**: What do you know about the priorities, limits, and strategy of the other side?
2. **Time**: Is either side operating under a deadline? Is there pressure from an outside party to settle quickly?
3. **Power**: Who has the ability to exercise control over the situation? Power can originate from different sources: (a) competition—if three parties make offers on the same house, who has the power? the seller, of course; (b) expertise—a third party supports your position and thus gives it validity; (c) persuasive capacity—experienced negotiators clearly present the issues, provide strong evidence to support their positions, and offer proposals that meet the needs of both sides.

The framing of an issue can greatly affect the outcome of the bargaining. Even a one-word change can significantly alter how both sides view the issues. For example, in negotiations to merge two organizations, the managers were reviewing the personnel files of each key person. In each case only one person would be retained. In the case of one high-ranking position, a manager stated, “Now in thinking about Taylor, he is too valuable not to keep him, and in the HR director’s job.” The second manager who wanted his own person, Lane, in that position needed to quickly reframe the issue of Taylor and repeated the statement with a one-word insertion: “In thinking about Taylor, he thinks he is too valuable not to keep him, and in the HR director’s job!” The issue of Taylor’s worth in the new organization was totally changed from fact to only his lofty opinion of himself, and Lane ended up in the position.

Negotiation scholar David Venter suggests four types of frames to consider in a negotiation situation: reframing the issue, focus framing, contrast framing, and negative framing (see Table 3.2).

**Reframing Offers** To be perfectly clear, the value of two offers can be identical, but the manner in which they are framed or worded can substantially affect how they are received and thus possibly accepted. For example, in a research study people were asked to choose between two plans of action, when three plants were scheduled to be closed and 6,000 employees laid off:

- **Plan A**: This plan will save one of the three plants and 2,000 jobs.
- **Plan B**: This plan has a one-third probability of saving all three plants and all 6,000 jobs but has a two-thirds probability of saving no plants and no jobs.

Then participants were asked to choose between plan B (same wording) and plan C:

- **Plan C**: This plan will result in the loss of two of the three plants and 4,000 jobs.

The two pairs of choices contained the exact same values or facts—plans A and C both will save only one plant of the three plants, and 2,000 of 6,000 jobs. Yet 80% of
Table 3.2  Four Types of Frames

<table>
<thead>
<tr>
<th>TYPE OF FRAME</th>
<th>PURPOSE</th>
<th>BUYER’S INITIAL POSITION: “THE PRICE OF $12,000 IS TOO HIGH …”</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Reframing</td>
<td>1. Change buyer’s context from a purchase decision to an investment decision.</td>
<td>Seller: “This work is a solid investment—the only other Ireland piece by this artist just sold at auction for $20,000!”</td>
</tr>
<tr>
<td>2. Focus framing</td>
<td>2. Change buyer’s context from a simple purchase decision by focusing on the uniqueness of the painting.</td>
<td>Seller: “This is the only painting of a lake the artist has done, and he’ll probably never get back to Ireland to paint another.”</td>
</tr>
<tr>
<td>3 Contrast framing</td>
<td>3. Change buyer’s context from a single price of $12,000 to much smaller, affordable monthly installments.</td>
<td>Seller: “If you pay for it over 24 months, the cost per month is less than the price of four tickets to a first-run play, but you will enjoy the painting for many years.”</td>
</tr>
<tr>
<td>4. Negative framing</td>
<td>4. Because humans are loss averse, frame buyer’s decision in terms of avoiding a loss.</td>
<td>Seller: “You can wait to decide—but another couple looked at it earlier today and said they would be back.”</td>
</tr>
</tbody>
</table>


the people in the study choose plan A in the first set of options, but then 80% chose plan B in the second set. The only difference was the positive framing of plan A compared to the negative framing of plan C.²⁴

In his book Getting Past No, William Ury suggests that negotiators should, in practice, never reject an opponent’s offer, but instead reframe it or literally “change the frame around the picture” so it satisfies the interests of both parties. Ury further suggests that reframing is the most valuable tactic in negotiations—and the single most valuable tool in reframing is the question asked, which should focus interests on each side. Ury suggests that the most useful reframing questions include the following:²⁵

- **Ask why:** Instead of treating the other party’s offer as an adversarial position, use it as an opportunity to better understand their interest or to test the firmness of the position. For example, “Why did you choose that exact number?” or “Why are you so determined to settle on that number—where did it come from?” A powerful “why” question can invoke the fairness norm: “Why is that a fair price?” Even if the other party refuses to directly defend the fairness of their number, the very fact that it cannot be easily defended inserts doubt in their mind about their own position, and thus makes it easier to achieve a concession.

- **Ask why not:** If the other party will not reveal the source of their position, asking “why not” can help uncover their real interests. For example: “Why not simply divide the difference equally?” or “Why not change our assumptions and see what figure the actuary gives us?” The answer to your question may reveal important information about the true interests of the other party.
• **Ask what if:** Instead of disagreeing with the offer of the other party, acknowledge it and respond with an option. For example: “I understand you believe you must have a 12% increase. What if we agreed to that figure—but to help pay for it, health care co-pays were changed?”

• **Ask for advice:** If asked in a constructive manner, the other party may develop an option that represents positive movement toward a settlement. For example: “How would you suggest I present that offer to my manager when company policy restricts us from providing service beyond one year?” or “I can agree to your price, if you can find a way to cover my delivery charges.” Opponents often appreciate the opportunity to help develop mutually agreeable options, and once involved, may even develop a sense of ownership in the options suggested, and thus help one of them become a settlement point.

**Reframing Personal Attacks**  Making personal attacks has, unfortunately, become a common tactic in negotiations. The other party may simply get caught up in the “heat of battle,” or may actually plan on using personal attacks as a means of getting the other party emotionally involved and thus possibly less focused on their objectives. Personal attacks may be direct, such as: “I can’t stand dealing with low-life people like you!” or “You are simply too stupid to realize that I’m going to win.” Or, they may be indirect, attacking your skill as a negotiator: “Are you sure you can afford this vacation home?” or “I don’t think you can analyze this proposal in time for us to reach a deal—you’d better get help.”

How should you respond to personal attacks? First and foremost, prepare yourself for the possibility. If you have never been exposed to such a tactic, but expect it might occur in your next encounter, then as part of your preparation think about how you will respond—and most important, don’t let a personal attack get you emotionally involved. If your emotions take over your strategy, then you have given the other party a major advantage.

For example, a few years ago a real estate developer bought two-thirds of a valuable piece of lakefront property, expecting to buy the other third that was for sale and was the key to the total development project. The developer had already made one critical mistake by purchasing the first two-thirds of the property with no guarantee that he could buy the other third; he failed to realize the significant leverage he had given the other party who owned the last one-third of the property. Then in the first face-to-face meeting to discuss the remaining third of the property, he became enraged when the owners indicated they would prefer to sell their third of the land to someone else, even if at the same price. The developer took this negotiation tactic—introducing the existence of another buyer who is not at the table—as a personal attack and repeatedly asked, “Why isn’t my money just as good as theirs?” and “Why do they only need to match my offer, but I must beat their offer?” In what is an all too common response when someone becomes emotionally involved, the developer angrily left the meeting, hired an attorney, and spent the next several months in court. In the end, he paid the same amount that the owners of the last one-third of the property had asked in the beginning, which was approximately just a little more than what he paid per for acre for the first two-thirds of the property. But his emotions led him to waste thousands of dollars on legal expenses and court fees.
What are successful responses to personal attacks on your character or abilities? First, as was just discussed, prepare yourself for the possibility. If you have never experienced such an encounter, then consider role-playing with someone who is experienced. Get used to the name-calling and keeping your mind focused on the issues at hand. Practice resisting the temptation to defend yourself—or worse, to respond with similar personal attacks. Both of these responses are perfectly natural, and tempting, but almost never productive. Instead they usually raise the emotional level of the other party to even higher levels, and decrease the likelihood of reaching an agreement. Instead, consider the advice of Roger Fisher and William Ury in their landmark book *Getting to Yes*. First, *recognize a personal attack for what it is*, and respond by sitting back and letting the other party blow off steam. Keep in mind, it’s only a tactic to gain advantage over you, so don’t let it reach your emotions. It might be helpful to respond with: “I think we all need a break, and in fact let’s take a 15-minute break.” Second, *reframe their attack on you as an attack on the problem or issues at hand*. In the real estate example just described, the buyer—instead of reacting emotionally and hiring an attorney—could have responded with: “When you indicate that you would just as soon sell your property to someone else, even at the same price, what I hear is there may be other interested buyers, and since this is a valuable piece of property, that is certainly a possibility. But I’m prepared to make you a fair offer today. What do suggest is a reasonable price?” That response would have reframed the personal attack back to the issue of settling on a price for the property. And it would have advanced negotiations without insulting the seller or falling for their tactic of introducing another possible buyer. Third, consider *responding with silence or a question*. Silence is a powerful tool in many negotiation situations (see Box 3.4). Silence after receiving a personal attack may cause the other party to become uncomfortable, and feel they have caused a stalemate. Thus, they may feel compelled to break the silence by making a positive statement and getting things back on track: “Well, that is not really a fair thing to say, let’s get back to work.” A carefully worded statement might achieve the same response. In the previous real

**BOX 3.4  Tactics for Success**

*“Silence Is Golden”*

When negotiations reach a critical point—such as when one party makes a verbal attack, refuses to make any concessions, or threatens to walk out—one tactic that might turn the tide is silence. A negotiator who says nothing in response to a verbal attack, unreasonable demand, or threat does, in fact, send a clear signal to the other party. Often, after a few minutes of silence, the negotiator who caused the breakdown will feel uncomfortable and make a conciliatory statement or concession in order to get the other party to continue to negotiate. If not, the silent party has not lost anything, and most likely will have communicated his or her displeasure with the actions of the other side. Experienced negotiators have learned that “silence is golden” when applied in appropriate situations.

estate example, the buyer might have responded with: “Would you prefer to end this discussion and bring the other party to the table to negotiate a deal?” The question would have reframed the discussion to focus on the issue at hand.26

**Final Negotiated Price**

At some point in the negotiation process, the parties involved believe they are close to a settlement. Before making a declaration such as “Well, I guess we’re done” or “I think we have a deal,” an experienced negotiator will consider a few critical points.

First, although price was the major issue being negotiated, ask if it is really the only issue. For example, a homeowner and home repair contractor agree on a price for siding installation, and they sign a standard form stating the price and a brief description of the work to be done. However, after the work is finished, the homeowner refuses to pay the contractor, perhaps because he is unhappy with the work, or it was completed later than they expected, or perhaps just because the homeowner thinks he can get away with not paying. If other issues had been negotiated as well—such as exactly how it will be determined when the work is finished (does the contractor or homeowner alone decide?), what interest the contractor is entitled to collect if payment is late, and who pays legal fees if the case goes to court—then both parties would be better served. A contract that specifies these issues in addition to the price can be critical to preventing common disputes, which arise in about 12% of all home repair contracts, according to the National Association of Remodeling Industry.27

In most simple distributive bargaining situations, shaking hands and exchanging a product for cash is all there is to it. However, if an immediate exchange of cash for goods is not possible, the bargainers should consider the classic economic principle of “the time value of money.” This basic concept has caused many deals to sour after an agreement is reached. Thus a second point to consider is the need for a contingency contract. A **contingency contract** is an agreement that specifies how a future event will change specific issues contained in the contract. If such a future issue cannot be foreseen, a contingency contract can allow the parties to reach agreement on all other issues, and then provide for exactly how the terms will be finalized once the future event is known.

Contingency contracts are commonplace in business, but they can also be useful in personal negotiations among family, friends, or neighbors. For example, three adult children over a period of several months distributed all of the property, household, and personal items in the estate of their late parents. As their parents wished, the process had gone smoothly and without any serious disagreements. Only the disposition of their parents’ home of 40 years remained to be negotiated. The parents’ Will specified that all estate items were to be divided equally, thus the logical solution was to sell the home and divide the proceeds into equal thirds. One of the three, however, asked her siblings if she could buy their two-thirds interests in the house so she could live in it. Because the other two had no similar desire and liked the idea of a family member keeping the house, they responded positively to the proposal.
Exactly how should they negotiate a “fair” sale price might be considered a common distributive bargaining situation, except the parties were not adversaries and had a continuing relationship (relational norm). They agreed to hire a trusted real estate agent to inspect the house and suggest a market price. Then they signed a written contract, which of course contained the market price. All three believed they had negotiated in a fair and responsible manner for all concerned. However, at the request of the one who was buying the house, the other two agreed to wait until she sold her existing home before closing the deal on their parents’ home. They thought this a reasonable request, since she could not easily afford two house payments. Unfortunately none of the three foresaw what then happened. The daughter listed her home well above its market value and it took 18 months to sell. During the first few months, she moved into their parents’ home. The contract had not included any specified maximum period of time to closing, or who would pay the utilities and taxes until the closing, or if any “rent” should be paid by the daughter during what became 18 long months of escalating tension among the three siblings. By the time the daughter did sell her house, these issues caused bitter feelings among the three. The two other children believed they had lost at least $12,000 each due to the length of the process. If, in addition to price, a contingency contract had been negotiated, the three siblings might easily have avoided a great deal of anguish. For example, the contract on the house could have included a standard clause requiring closing at the agreed-to price within 90 days, and a contingency clause could specify that if the daughter did not sell her house within 90 days she would owe a specified amount of rent, plus utilities and taxes to be paid at the closing. The clause might also specify a maximum period of two years for the closing, after which the house would be put on the market.

Contingency contracts can be valuable in many negotiation situations if any future event will likely alter the outcome of the negotiated deal. In a noted Harvard Business Review article, researchers Max H. Bazerman and James J. Gillespie cite several possible benefits of using a contingency contract, as follows:

- The parties can counter negotiation biases by including future scenarios predicted by each party (such as mortgage rates in 12 months), and then letting future events decide which was correct.
- An impasse can be avoided by allowing the outcome of a future event to determine a critical portion of the agreement. For example, Bazerman and Gillespie recall when negotiations between a television production company and an independent station broke down over different expectations of the ratings of the show in question, with each ratings point worth about $1 million. A contingency contract could have specified that a $1 million license fee per ratings point, as determined by the Nielsen ratings on a specified future date, would be paid per the terms of the contract.
- It can motivate parties to perform at higher levels. For example, in the estate house dispute just discussed, a contingency contract may have motivated the daughter to sell her own house at a lower price or spend more time and effort fixing it up before she put it on the market—to avoid paying rent and other expenses after the 90-day period.
• The potential risk involved can be shared by the parties, rather than specifying an outcome at the present, when uncertainty about future events may make them uneasy about their level of risk. Retailers, for example, often share the potential risk of unsold products through contingency contracts with vendors by agreeing to rebates on unsold inventory.

Bazerman and Gillespie also point out that contingency contracts may not be right in every situation due to their potential limitations. First, they require a continuing relationship between the parties, which might not always be possible. Second, they may not be easily enforceable, and court costs can be prohibitive. And third, they require transparency—the future event must be easily and objectively measured and not subject to manipulation by either party.29

Let us now return to the Chapter Case. The bargaining situation is illustrated in Figure 3.6, including a summary of the negotiations. The seller listed her initial price or opening offer at $12,500 and the buyers made an opening offer of $7,500. The parties then decided, but kept confidential, their bottom line or reservation price. The seller decided she could accept no less than $8,000 and still realize a reasonable profit. The buyers decided their absolute limit was $11,000. Thus the range of possible settlement amounts, or zone of possible agreement (ZOPA), became $8,000–$11,000—although neither side could know the range since neither knew the other party’s reservation price.

So how might this classic distributive bargaining situation have been settled? Because the buyer made the first verbal offer of $7,500, it is likely that the seller would make the first counteroffer. She would likely utilize the good faith bargaining norm and decide to show her willingness for give-and-take by making a counteroffer.
of $11,000, and frame her offer with, “I’m very pleased that you are sincerely interested in Sunday. I know you have looked at it before. But this work is similar in size, detail, and content to three others that I sold in this price range over the last year, all with about the same number of hours invested. Also, I consider it to be one of my best paintings. For you I’m willing to come down $1,500, to $11,000.” By citing the number of hours she has invested in the painting, the seller brought the need norm (see p. 67) into the negotiation. The buyers realize that $11,000 is their reservation price, and if they are particularly anxious to close the deal, or perhaps if they are inexperienced negotiators, they might agree to $11,000. But they likely would rely on the equality fairness norm and offer to split the difference of $3,500 ($11,000–$7,500) and thus offer $9,250. They would decide to make this offer because it is an equal sacrifice by both parties, and because it’s not a round number and is based on a defensible position, which makes them more comfortable in offering it to the seller. Since the new counteroffer of $9,250 is higher than her reservation price, the seller might accept it if she was significantly motivated to sell. Or, she might decide that since the buyers have only made one counteroffer, they have not made their “highest and final offer,” and thus she offers to make a second, but smaller, concession of $1,000, again noting that the work is similar to others that sold at higher prices. At this point the buyers might agree to her second counter of $10,000, and thus close the deal. Both parties will likely believe they have negotiated a “good deal.” The seller gained $2,500 over the buyers’ opening offer, and realized $2,000 more than her reservation price. The buyers also perceived they gained, because the final price was $2,500 less than the listed price, and they paid $1,000 below their reservation price.

**Summing Up**

Think about the next negotiation situation in your personal life or at work. Can it be categorized as a distributive bargaining situation?

If two parties are primarily negotiating a single issue such as price, and if each intends to maximize their outcome and the likelihood of a continuing future relationship is small, then consider it a distributive situation and prepare yourself by answering the following questions.

1. Describe the situation. What is the primary issue to be negotiated?

2. What do you expect will be the opening offer by the other party (listed price, last year’s price, and so forth)?

3. How can you best anchor your opening offer in the mind of the other party? (With facts, an extreme offer, past precedent, or something else?) What will be your opening offer?

   Anchor: ________________________________

   Offer: ________________________________
4. What is your resistance point?

_______________________________________________________________________

5. What is your best guess of the resistance point of the other party?

_______________________________________________________________________

6. Given the answers to questions 4 and 5, what is the estimated ZOPA?

_______________________________________________________________________

7. Which of the norms presented in this chapter (Fairness: equality, equity, need; Reciprocity; Good faith; Maintaining the status quo) are you most likely to use in deciding and stating your offer(s)?

_______________________________________________________________________

8. Can you anticipate how you might reframe the position of the other party?

Ask why:

_______________________________________________________________________

Ask why not:

_______________________________________________________________________

Ask what if:

_______________________________________________________________________

Ask for advice:

_______________________________________________________________________

9. How can you best defend against an excessive anchor set by the opening offer of the other party?

_______________________________________________________________________

10. Do you have a possible future relationship with the other party? If so, how should you protect it while negotiating this exchange?

_______________________________________________________________________

_______________________________________________________________________

Learning Exercise: Buying a House

The purpose of this exercise is to apply the five negotiation skills presented in this chapter to an actual negotiation situation. You wish to buy a home in a particular neighborhood because you like it and it is in the best school district. Your family needs at least four bedrooms, 2½ baths, and a two-car garage. At this time you have twice viewed one house that meets all of your needs and is located at 5656 Valley Oak Court. Your agent has provided you with the information on this house as well as five other houses in the neighborhood (A through E in the table below) that meet your criteria and have sold in the past year. The house on Valley Oak Court is listed for $329,000. Review the following information and answer these skills questions:

Skill 3.1: Is this a distributive bargaining situation? Why or why not?
Skill 3.2: How will you determine your reservation price?
Skill 3.3: What initial offer should you make to use bracketing and achieve your target price of $310,000?
Skill 3.4: Which norm(s) can you utilize in presenting your initial offer?
Skill 3.5: How can you frame an initial offer that incorporates the norm(s) you are applying?

<table>
<thead>
<tr>
<th>House</th>
<th>Price</th>
<th>Square Feet</th>
<th>Rooms</th>
<th>Bed Rooms</th>
<th>Finished Basement</th>
<th>Baths</th>
<th>Garages</th>
<th>Time on Market</th>
<th>Miscellaneous</th>
</tr>
</thead>
<tbody>
<tr>
<td>5656 Valley Oak</td>
<td>???</td>
<td>3,600</td>
<td>10</td>
<td>4</td>
<td>No</td>
<td>2.5</td>
<td>2</td>
<td>6 mo.</td>
<td>Large wooded lot, pantry, all brick</td>
</tr>
<tr>
<td>A.</td>
<td>$359</td>
<td>3,900</td>
<td>12</td>
<td>4</td>
<td>Yes</td>
<td>3.5</td>
<td>3</td>
<td>2 mo.</td>
<td>River view, central vac, large pantry</td>
</tr>
<tr>
<td>B.</td>
<td>$349</td>
<td>4,100</td>
<td>12</td>
<td>4</td>
<td>Yes</td>
<td>2.5</td>
<td>2</td>
<td>3 mo.</td>
<td>Large wooded lot, cul-de-sac, crown molding</td>
</tr>
<tr>
<td>C.</td>
<td>$319</td>
<td>3,600</td>
<td>13</td>
<td>5</td>
<td>Yes</td>
<td>4</td>
<td>2</td>
<td>6 mo.</td>
<td>Large deck w/ arbor, Corian counters, alarm</td>
</tr>
<tr>
<td>D.</td>
<td>$275</td>
<td>3,400</td>
<td>9</td>
<td>4</td>
<td>No</td>
<td>2.5</td>
<td>2</td>
<td>8 mo.</td>
<td>Wooden lot, pantry, fans</td>
</tr>
<tr>
<td>E.</td>
<td>$246</td>
<td>3,100</td>
<td>8</td>
<td>4</td>
<td>No</td>
<td>2.5</td>
<td>2</td>
<td>8 mo.</td>
<td>Private yard, brick, custom shelves</td>
</tr>
</tbody>
</table>

Endnotes

5. Ibid.


29. Ibid.