



Summary of Chapter 2 Part 1

Negotiation Fundamentals

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Negotiation is a complex process that requires careful planning, strategic thinking, and thorough preparation before parties ever sit down at the table. At its core, successful negotiation depends on understanding both the substantive issues at stake and the procedural steps necessary to reach an agreement. Ratification represents a critical final step in this process, whereby parties explicitly approve or authorize terms that were previously negotiated but not yet binding. This formal approval transforms tentative agreements into enforceable contracts, ensuring that all parties are legally committed to the negotiated terms.

The foundation of effective negotiation rests on comprehensive preparation. Legal professionals must familiarize themselves with underlying facts, identify additional information needs, and assess both the strongest and weakest aspects of their client's position. Understanding whether a situation calls for cooperative or competitive approaches fundamentally shapes negotiation strategy. Attorneys must discuss client goals thoroughly, determine the client's direct involvement level, research relevant law, consider alternatives to negotiation, develop initial strategies, and carefully decide what information to share with opposing parties while maintaining ethical obligations.

Paralegals play an integral role throughout the negotiation process, though always within appropriate professional boundaries. Experienced legal assistants often prepare fact summaries, conduct legal research, analyze case strengths and weaknesses, and interview clients to gather essential information. However, legal strategy remains firmly within the attorney's domain. Paralegals must never offer strategic advice directly to clients without attorney approval, as doing so could undermine the attorney-client relationship and violate professional responsibilities. The most effective approach involves discussing ideas privately with supervising attorneys, allowing them to make final strategic decisions.



Instructions for Kahoot Review

- This review covers Chapter 2 Part 1: Distributive Negotiation
- Each question has one correct answer.
- You will have 60 seconds per question. Points are awarded for accuracy and speed.
- At the end, review your results to see which areas you need to study further

Tip: Don't just aim for speed 4 think about why the correct answer is correct. This will help with deeper understanding for exams.

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Distributive Negotiation Chapter 1 Part 1 – Kahoot! Course

This is to supplement the courseware for Crestpoint University – Alternative Dispute Resolution

The Seven Stages of Negotiation

01

Prepare and Set Goals

Establish objectives, research facts, and develop initial strategy before engaging the other party

02

Initial Interaction and Offers

Make first contact, establish tone, and present opening positions to begin the negotiation process

03

Exchange Information

Share relevant details, refine understanding, and gather intelligence about the other party's position

04

Bargaining

Engage in give-and-take discussions, make concessions, and work toward mutually acceptable terms

05

Move Toward Closure

Narrow remaining differences, address final obstacles, and push toward agreement or impasse

06

Reach Agreement or Impasse

Parties either successfully conclude negotiations or determine that no agreement is possible

07

Finalize and Document

Draft formal agreements, ensure all terms are clearly stated, and obtain necessary signatures

These seven stages, as outlined by Folberg, provide a comprehensive framework for understanding how negotiations unfold from initial preparation through final documentation. While this model offers valuable structure, it's important to recognize that real-world negotiations rarely follow such a linear path. Parties may cycle back through earlier stages, skip steps entirely, or experience multiple rounds of bargaining before reaching resolution. The framework serves as a useful guide rather than a rigid prescription, helping legal professionals anticipate what might happen next and prepare accordingly.

One critical limitation in negotiation involves agreements to negotiate. Unlike binding arbitration or mediation clauses that courts will enforce, agreements requiring parties to negotiate in good faith at some future date are essentially unenforceable. If one party later refuses to participate in promised negotiations, courts cannot compel their involvement. This principle underscores the importance of reaching concrete, enforceable agreements rather than merely agreeing to continue discussions.

Distributive Bargaining: The Zero-Sum Game

Distributive bargaining scenarios represent pure competition where parties negotiate over a fixed, limited pool of resources. In these zero-sum situations, any gain by one party necessarily comes at the expense of the other—there is no opportunity to expand the pie or create additional value. This fundamental characteristic distinguishes distributive bargaining from cooperative approaches and shapes every strategic decision negotiators make. Understanding when you're in a distributive scenario is crucial because the tactics that succeed in competitive environments may fail or even backfire in cooperative settings.

One of the most dangerous mistakes in distributive bargaining is "negotiating against oneself"—attempting to second-guess the opposing party's position and preemptively making concessions based on those assumptions. This error often results in settling for far less than might have been achieved through proper negotiation. Research demonstrates that distributive bargaining is heavily influenced by informational asymmetries and strategic manipulation of information to shape opponents' perceptions and create doubt about their positions. In competitive negotiations, information truly is power. What you know about the other party, what you reveal about your own position, and how you frame both sets of information will significantly impact the final outcome.

Key Strategic Considerations

Experts disagree about appropriate tactics in distributive bargaining. Some argue that fairness matters little—your approach should mirror your opponent's attitude. Others warn that threats may lead to impasse as often as breakthrough. Many view negotiation as a game with rules that only you need to know, while some emphasize the importance of maintaining professional relationships even in competitive scenarios. For paralegals, the best approach is taking cues from supervising attorneys, understanding their negotiation philosophy, and aligning support accordingly.

Information as Power

Control what you reveal, when you reveal it, and how you frame it. Strategic disclosure shapes perceptions and influences outcomes in competitive negotiations.

Negotiation Tactics and Ethical Boundaries

Deception occupies a controversial but undeniable role in competitive negotiation, particularly in litigation contexts. As attorney Jeffrey Krivis notes, deception can be described as "the raw material that drives negotiation of litigated cases," allowing barriers to be overcome and concessions to occur. While this may sound troubling, it's important to distinguish between strategic posturing—which is both legal and ethically acceptable—and outright fraud or misrepresentation, which crosses professional and legal boundaries. The reality is that parties in adversarial litigation are not expected to be completely candid about their positions, settlement authority, or case weaknesses.

Authority Limitations

Negotiators often claim they lack full settlement authority, requiring approval from clients or supervisors. This tactic can be legitimate when true, but becomes problematic when used deceptively to gain bargaining advantage. The key distinction lies in whether the negotiator genuinely needs approval or is simply using the claim strategically to extract better terms.

Strategic Posturing

Attorneys routinely suggest caps on what clients will pay or minimums they'll accept, even when they have authority to go further. This posturing is part of the negotiation game that has evolved around competitive bargaining. Statements like "this is as high as we're going to go" or "that's well below my client's threshold" are expected tactics that don't violate legal ethics.

The Perception Problem

Success in distributive bargaining depends heavily on how the other party perceives your position, authority, and willingness to walk away. Tactics can backfire if opponents see through your strategy or, conversely, if they mistakenly believe you're bluffing when you're actually being truthful. Managing these perceptions requires skill, experience, and careful attention to credibility.

The balance between effective advocacy and ethical practice requires careful navigation. While strategic ambiguity and posturing are acceptable, outright lies about material facts are not. Negotiators must understand their jurisdiction's rules of professional conduct and maintain credibility even while engaging in competitive tactics. The most successful negotiators develop reputations for being tough but honest, allowing their strategic moves to be taken seriously rather than dismissed as empty bluffs. For paralegals supporting these negotiations, understanding these nuances helps in preparing materials, anticipating opposing tactics, and providing valuable strategic input to supervising attorneys.