

# Chapter 2 Part 1

## Negotiation Fundamentals & Strategy

 by Roger Batchelor

A comprehensive guide to negotiation planning, tactics, and execution in legal practice



## FOUNDATION

# Understanding Ratification



## What is Ratification?

Ratification is the process whereby a party explicitly approves or authorizes terms or agreements not previously approved.

When attorneys negotiate with latitude, clients must still ratify the final agreement by signing a contract, memorandum, or binding document.

# The 10-Point Planning Checklist

A comprehensive framework for negotiation preparation based on Nutshell's methodology:

## Facts & Information

Familiarize yourself with underlying facts and determine if additional information is needed

## Case Analysis

Identify weakest and strongest aspects of your client's case for strategic planning

## Scenario Type

Determine if dealing with cooperative/integrative or competitive/distributive situation

# Planning Checklist Continued

1

## Client Goals

Discuss objectives to understand what client hopes to accept and willing to give

2

## Client Role

Determine client's direct involvement while maintaining ethical obligations

3

## Legal Research

Research and review all relevant law thoroughly

4

## Alternatives

Consider alternatives to negotiation and develop contingency plans

5

## Strategy & Tactics

Decide initial approach and what information to share with opposing party

## PARALEGAL ROLE

# The Paralegal's Critical Contribution

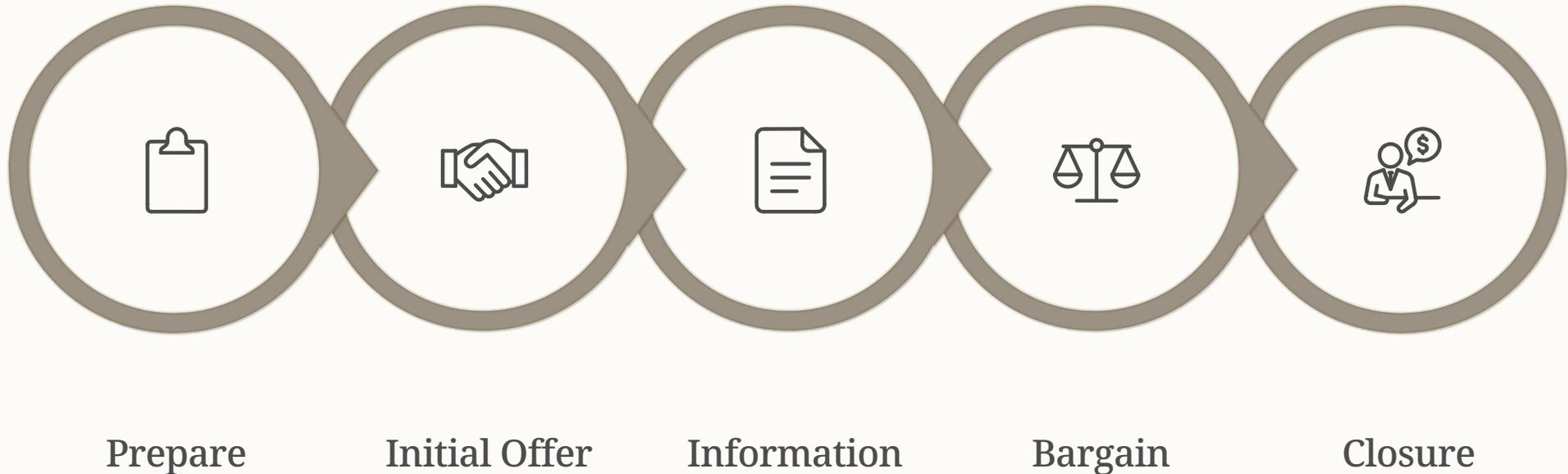


Legal assistants are integral to negotiations at most law firms. Paralegals commonly provide:

- Summary of facts that attorneys rely upon
- Legal research and analysis
- Input on case strengths and weaknesses
- Client interviews to collect information

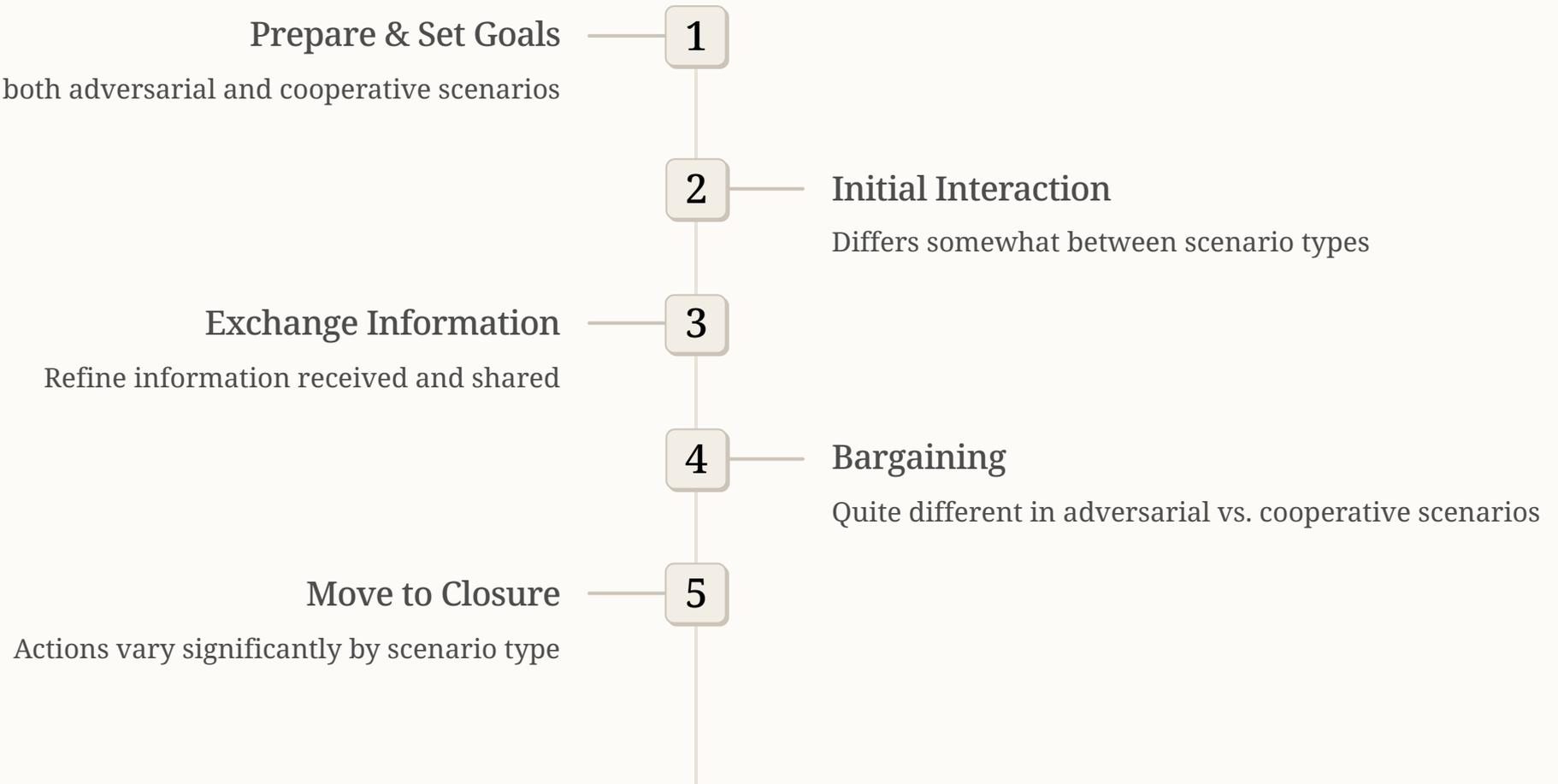
❏ **Important:** Legal strategy remains the attorney's realm. Always discuss ideas privately with your attorney before presenting to clients.

# Folberg's Seven Stages of Negotiation



Folberg's framework complements Nutshell's checklist by focusing on what happens once initial contact is made with the opposing party.

# Stage Breakdown: Preparation to Closure



⚠ CRITICAL

# Agreements to Negotiate

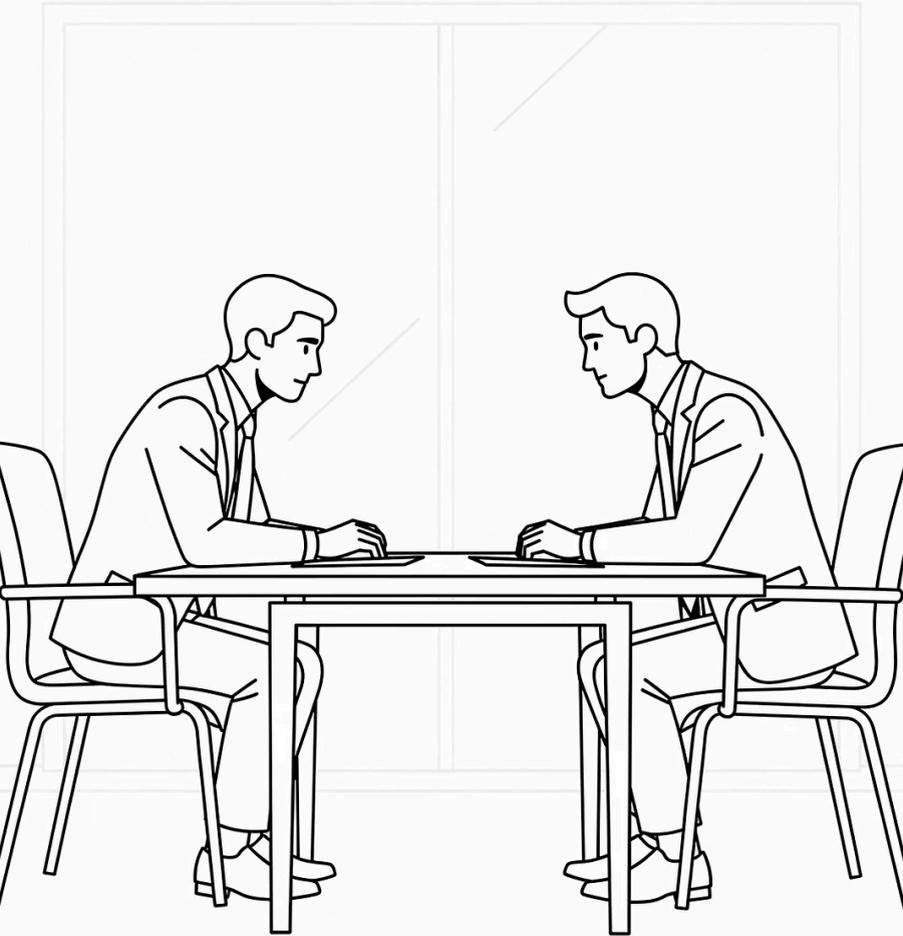
## The Bottom Line

Agreements to negotiate are essentially meaningless and cannot be enforced by courts.

## Example Scenario

Louis and Jack enter a land lease for \$1 million per year for 20 years. The contract states Jack may renew for 10 more years "at a price to be negotiated in good faith."

**Result:** This clause is invalid. If Louis refuses to negotiate after 20 years, a court cannot order him to do so. Agreements to agree cannot be enforced.



# Distributive Bargaining Scenarios

Understanding zero-sum negotiations where one party's gain equals another's loss

# Key Distributive Concepts



## Distributive Scenario

Parties negotiate to obtain rewards from a limited pool. Anything not going to A will go to B.



## Zero-Sum Situation

Any gain by one party is offset by an equal and opposite loss by the other.



## Status Quo

The currently existing state of affairs; facts as they stand at present.

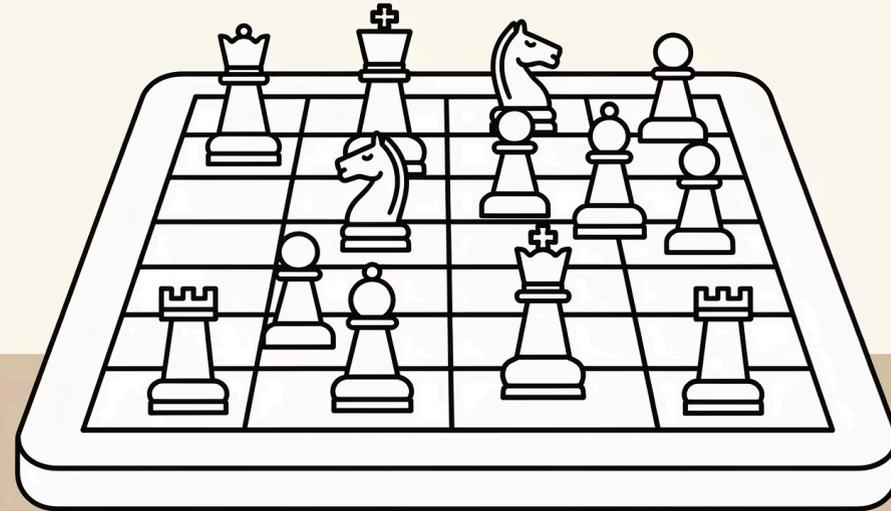
## STRATEGY

# Information as Power

"Research shows that distributive bargaining is greatly influenced by informational asymmetries and by manipulation of information to influence opponents' perceptions."

— Nutshell, p. 17

In competitive negotiation, what you know about the other party and what you let them know about you will affect both decision-making processes.



# Avoiding Self-Negotiation

Professor Michael Preston warns against "negotiating against oneself" — second-guessing the other party's position often leads to worse outcomes.



## Your Goal

Know what you want to achieve



## Don't Assume

Avoid guessing opponent's position



## Make Strong Offers

Negotiate from strength, not weakness

# Deception in Negotiation

## The Reality

According to Attorney Jeffrey Krivis, deception is "the raw material that drives negotiation of litigated cases."

Common tactics include:

- Claiming lack of full settlement authority
- Posturing about acceptable terms
- Strategic use of information asymmetries
- Exaggerating strengths or minimizing weaknesses



# Authority & Negotiation Tactics



## No Authority

Every offer must be brought back to client. Slows negotiation but protects against overreach.



## Limited Authority

Attorney given range of acceptability. Allows efficient negotiation while protecting client interests.



## Claimed Lack

Negotiator claims to lack authority as tactic. Can improve position but risks backfiring if disbelieved.

# Key Takeaways

-  **Preparation is Essential**  
Use comprehensive checklists to analyze facts, law, client goals, and strategic options before engaging
-  **Perception Matters**  
Success depends on how the other party perceives your position, authority, and willingness to settle
-  **Information Equals Power**  
In distributive scenarios, what you know and what you reveal directly impacts negotiation outcomes
-  **Follow Your Attorney's Lead**  
Paralegals should align with their attorney's negotiation style and always discuss strategy privately