

NALSAR UNIVERSITY DDE

Advanced Diploma in ADR



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NEGOTIATION

WHAT IS NEGOTIATION

- Negotiation is an interactive communicative process that potentially takes place whenever you want something from some one else or they want something from you.
- Negotiation is achieving what you want by convincing the person from whom you want that.

APPROCHES TO NEGOTIATE

- Adversarial: Bargain over position
 - Distributive Bargaining theory
- Principled Negotiation
 - Integrative Bargaining theory

Position Bargaining



Much of the legal negotiation emphasizes an adversarial model, implying an orientation or approach that focuses on "maximizing victory."

Hard or Soft Negotiation

SOFT

Participants are friends.

The goal is agreement.

Make concessions to cultivate the relationship.

Be soft on the people and the problem.

Trust others.

Change your position easily.

Make threats.

HARD

Participants are adversaries.

The goal is victory.

Demand concessions as a condition of the relationship.

Be hard on the problem and the people.

Distrust others.

Dig in to your position.

Make offers.

Contd...

Disclose your bottom line.

Mislead as to your bottom line.

Accept one-sided losses to reach agreement.

Demand one-sided gains as the price of agreement.

Search for the single answer: the one *they* will accept.

Search for the single answer: the one *you* will accept.

Insist on agreement.

Insist on your position.

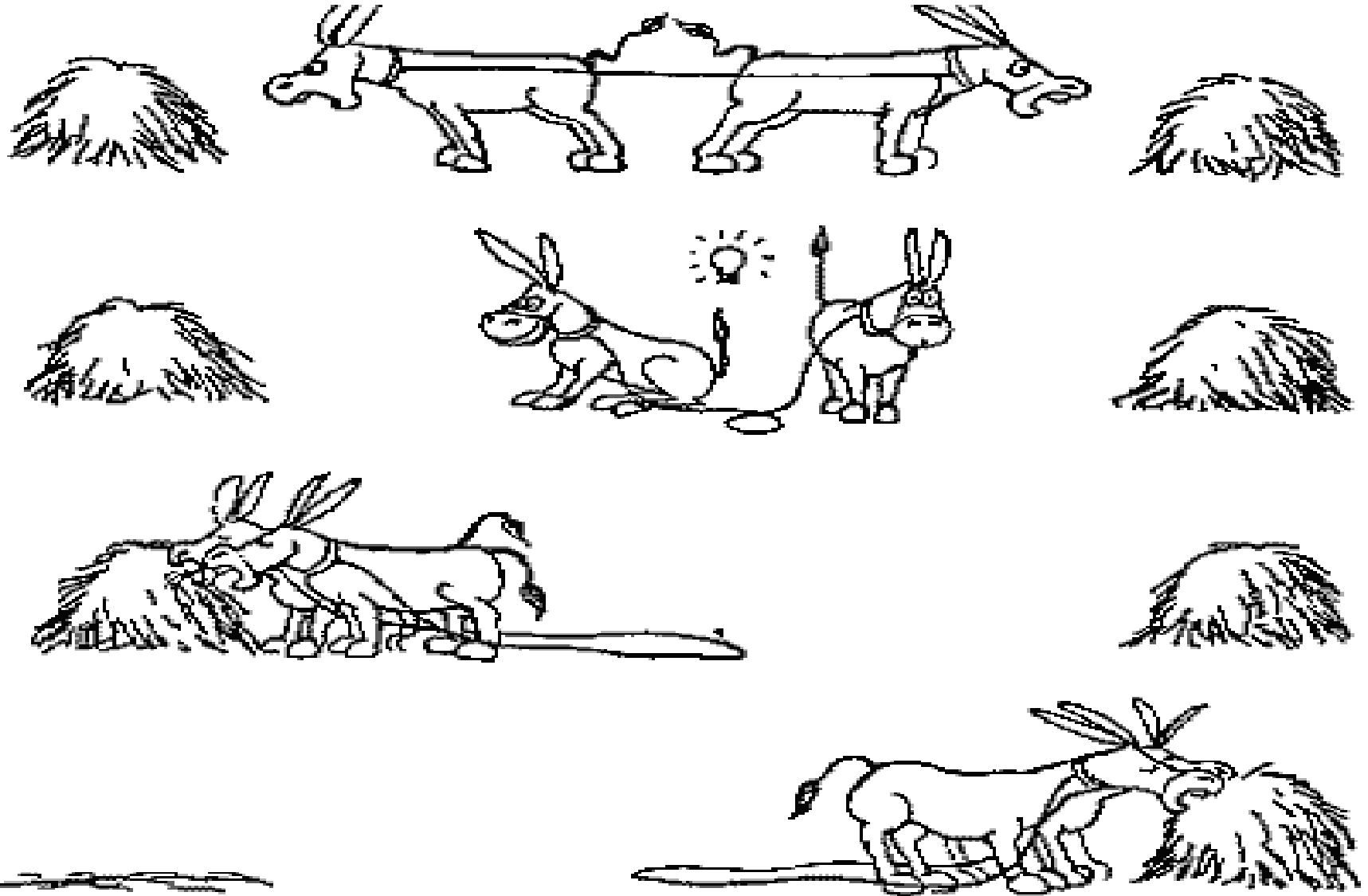
Try to avoid a contest of will.

Try to win a contest of will.

Yield to pressure

Apply pressure

Co-operative Negotiation



Orientations to Negotiation

Orientation → Mind-set → Behavior → Results.

The orientation (adversarial or problem solving) leads to a mind-set about what can be achieved (maximizing individual gain or solving the parties' problem by satisfying their underlying needs) which in turn affects the behavior chosen (competitive or solution searching) which in turn affects the solutions arrived at (narrow compromises or creative solutions).

Bargain Over Positions

CUSTOMER	SHOPKEEPER
How much do you want for this brass dish?	That is a beautiful antique, isn't it? I guess I could let it go for \$75.
Oh come on, it's dented. I'll give you \$15.	Really! I might consider a serious offer, but \$15 certainly isn't serious.
Well, I could go to \$20, but I would never pay anything like \$75. Quote me a realistic price.	You drive a hard bargain, young lady. \$60 cash, right now.
\$25.	It cost me a great deal more than that. Make me a <i>serious</i> offer.
\$37.50. That's the highest I will go.	Have you noticed the engraving on that dish? Next year pieces like that will be worth twice what you pay today.

Problems

- 👉 **Agreement becomes less likely**-As more attention is paid to positions, less attention is devoted to meeting the underlying concerns of the parties.
- 👉 **Arguing over positions is inefficient**
- 👉 **Arguing over positions endangers an ongoing relationship**
- 👉 **Being nice is no answer**-The soft negotiating game emphasizes the importance of building and maintaining a relationship. As each party competes with the other in being more generous and more forthcoming, an agreement becomes highly likely. But it may not be a wise one

Traditional Model of Competitive Negotiation- Assumption

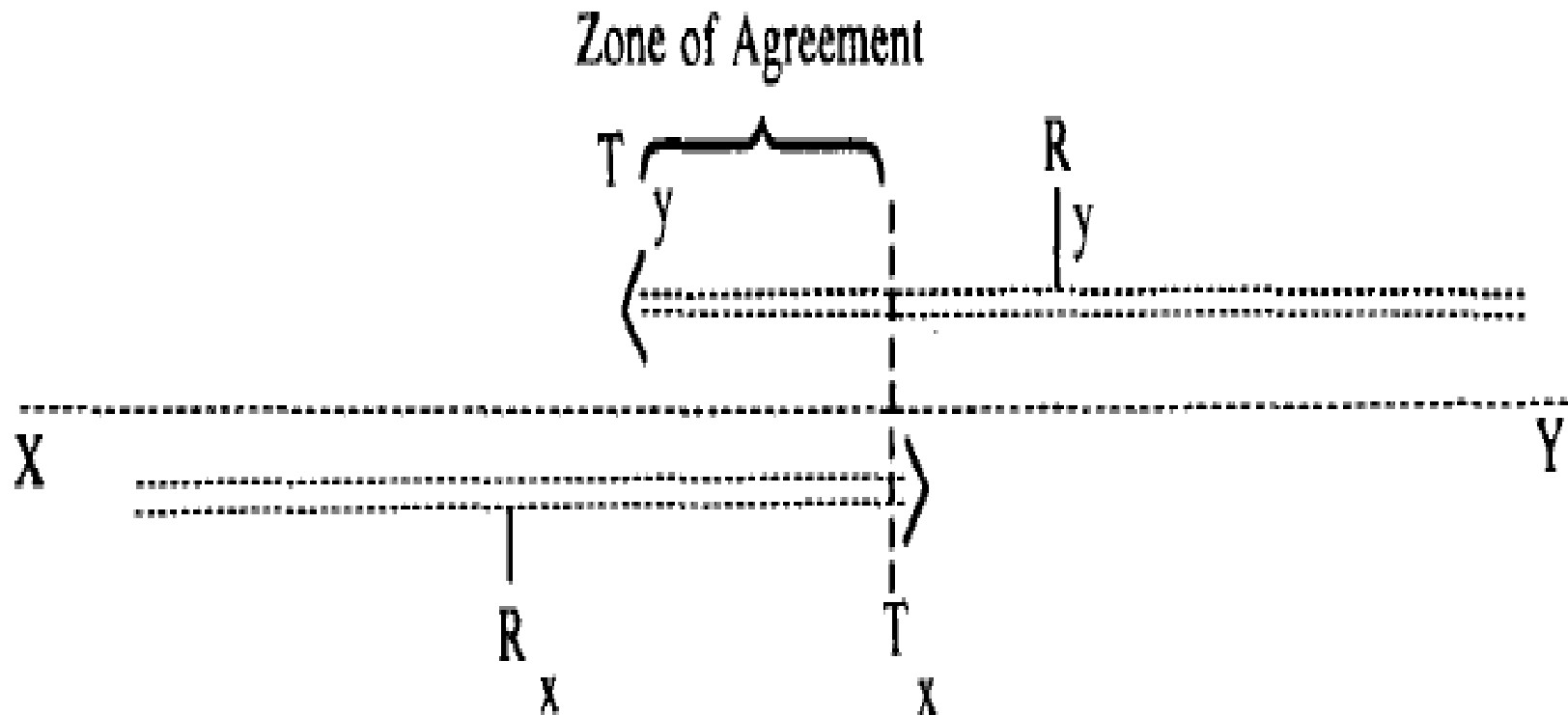
It is assumed that the parties must be in conflict and since they are presumed to be bargaining for the same "scarce" items, negotiators assume that any solution is predicated upon division of the goods. In the language of game theorists, economists, and psychologists, such negotiations become "**zero-sum**" or "**constantsum**" games and the bargaining engaged in is "**distributive**" bargaining.

Simply put, each party wants as much as he can get of the thing bargained for, and the more one party receives, the less the other party receives.

Structure of an Adversarial Negotiation

- Setting the target points
- Setting of the resistance or reservation point
- Ritual of offer and demand with a pattern of reciprocal concession
- Compromise solution at some point along the scale where target or resistance point overlap.

Assumption that negotiations are linear win/lose games



T= Target point (or aspiration point)

R= Resistance point (or reservation level)

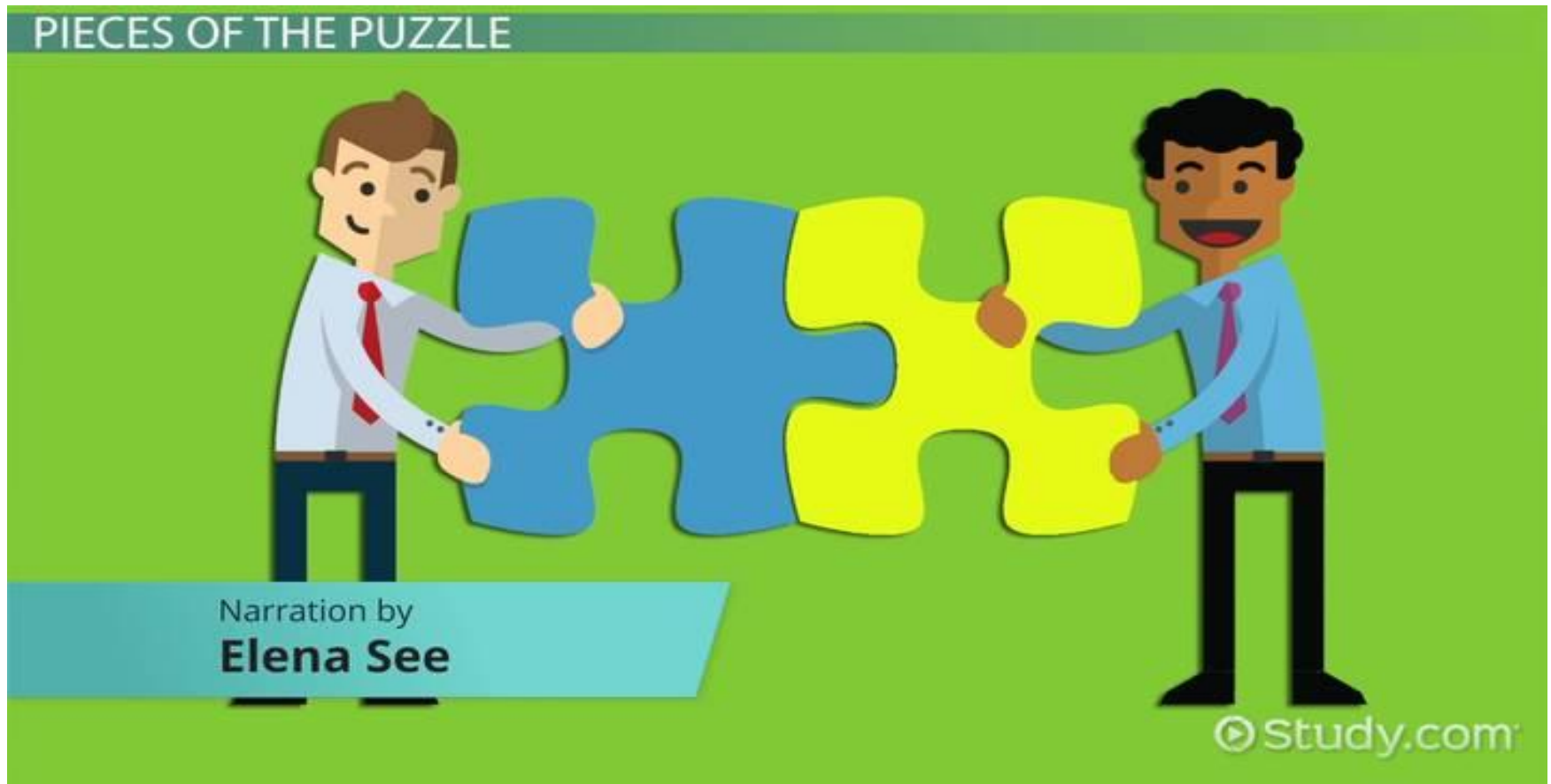
Limitations

- Although such a model encourages compromise at some midway point, it frequently fails to provide a satisfactory solution for the parties.
- A linear negotiation structure might work in those few cases where there is really only one issue, but it is clearly insufficient when the issues in a negotiation are many and varied
- Particular mind-set concerning possible solutions which then tend to produce a competitive process

Contd...

- The principle that one should hide information about one's real preferences is based on unexplored assumptions and structure of solutions that are "legal" rather than what the client might desire
- Adversarial orientations lead to competitive strategies, thus may produce inefficiencies
- Adversarial structure encourages compromise in its conventional sense; that is, both parties must give something up in order to reach agreement.

Principled Negotiation- Aims



Arriving to a wise solution by focussing on basic interests, mutually satisfying options and fair standards

CHARACTERISTIC OF NEGOTIATION

According to Raiffa, Richardson & Metcalfe,
Negotiation Analysis, The Science and Art of
Collaborative Decision Making (2002) :

“...[T]he process of communication, persuasion and choice involves the use of highly personal, somewhat intangible skills, a mixture of shrewdness and intuition that many regard more as an “art” than a proper subject for scientific investigation”

Principled negotiation is contrasted with hard and soft positional bargaining

PROBLEM Positional Bargaining: Which Game Should You Play?		SOLUTION Change the Game — Negotiate on the Merits
SOFT Participants are friends. The goal is agreement	HARD Participants are adversaries. The goal is victory.	PRINCIPLED Participants are problem-solvers. The goal is a wise outcome reached efficiently and amicably.

Contd...

Make concessions to cultivate the relationship.

Demand concessions as a condition of the relationship.

Separate the people from the problem.

Be soft on the people and the problem.

Be hard on the problem and the people.

Be soft on the people, hard on the problem.

Trust others.

Distrust others.

Proceed independent of trust.

Change your position easily.

Dig in to your position.

Focus on interests, not positions.

Make offers.

Make threats.

Explore interests.

Disclose your bottom line.

Mislead as to your bottom line.

Avoid having a bottom line.

Contd...

Accept one-sided losses to reach agreement.	Demand one-sided gains as the price of agreement.	Invent options for mutual gain.
Search for the single answer: the one they will accept.	Search for the single answer: the one <i>you</i> will accept.	Develop multiple options to choose from; decide later.
Insist on agreement.	Insist on your position.	Insist on using objective criteria.
Try to avoid a contest of will.	Try to win a contest of will.	Try to reach a result based on standards independent of will.
Yield to pressure.	Apply pressure.	Reason and be open to reasons; yield to principle, not pressure.

The Method - Principled Negotiation

- Principled negotiation method uses four basic points
 - ➡ **Taking people out of the problem**
 - ➡ **Looking for shared interest**
 - ➡ **Look for mutual options**
 - ➡ **Base all ideas against standardized objective criteria**

Principled Negotiation- Elements

- **Interests:** Focus on interests, not positions.
- **Options:** Generate a variety of possibilities before deciding what to do
- **Standard:** Insist that the result be based on some objective criteria.
- **People:** Separate the people from the problem.
- **BATNA:** Best Alternative to a negotiated agreement

Elements

- INTERESTS : Your interests and other interests in Negotiation. Interest is different from position. Interests may be classified into three categories:
 - (i) Absolutely essential – Must be achieved.
 - (ii) Important – It is important. May be obtained in different forms : there has to be flexibility; Need not break the deal for not getting the way you want;
 - (iii) Desirable –This is generally built as a buffer; May be given up to get important or absolutely essential things.
- EXPLORING SHARED INTERESTS

- OPTIONS – There are many ways of satisfying interests. Options are possible solutions to the problem. What options will satisfy your interests.
- STANDARDS- It is important to distinguishing between the positions expressed in negotiation and the underlying interests of the parties. By focusing on what the parties really need they may uncover mutual or complementary interest, an important step towards “win-win” solutions based on fair and acceptable criteria.
 - ❑ Legitimacy – When you put forth your option, what supports that? The proposals and counter proposals are to be properly supported. You will be on a firm footing.

INVENT CREATIVE OPTIONS

- Separate the act of inventing options from the act of judging them;
- To broaden the options on the table rather than look for a single answer;
- To search for mutual gains; and
- To invent ways of making their decisions easy.

Standards

Negotiating with objective criteria

- Having identified some objective criteria and procedures, how do you go about discussing them with the other side?
- There are three basic points to remember:
 - Frame each issue as a joint search for objective criteria.
 - Reason and be open to reason as to which standards are most appropriate and how they should be applied.
 - Never yield to pressure, only to principle. In short, focus on objective criteria firmly but flexibly.

Adopting Standards: Produces wise Agreements

- The more you bring standards of fairness, efficiency, or scientific merit to bear on your particular problem, the more likely you are to produce a final package that is wise and fair.
- Approaching agreement through discussion of objective criteria also reduces the number of commitments that each side must make and then unmake as they move toward agreement.
- Independent standards are even more important to efficiency when more parties are involved.
- At minimum, objective criteria need to be independent of each side's will.

SEPARATE PEOPLE FROM PROBLEMS:

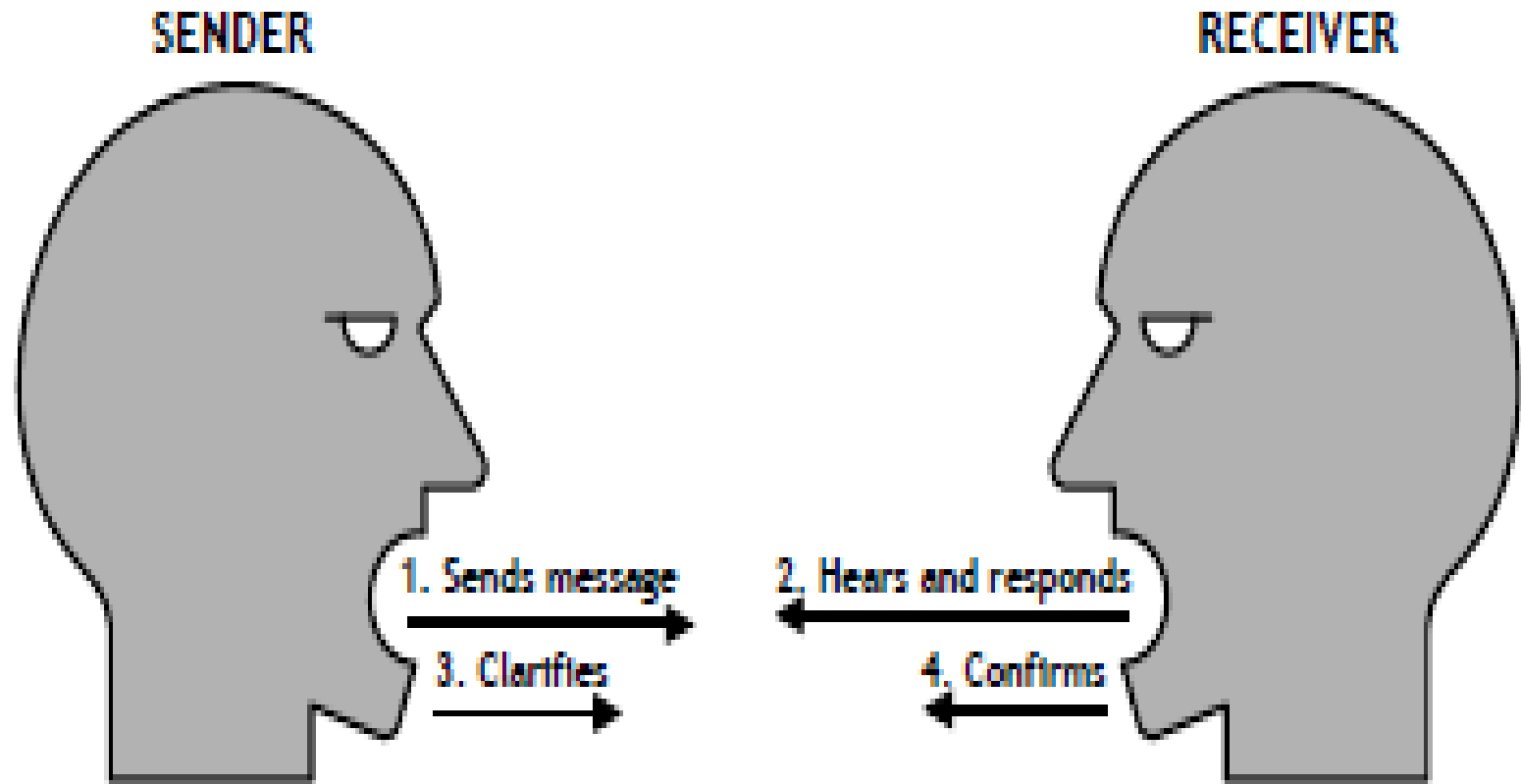
- Perception
- Emotion
- Communications – Negotiation takes place through communications. Verbal or Non-verbal – “body language”, Skill of listening. Even if Negotiations fail, communication lines could be kept alive.
- Relationship – Separate problems from the relationship. No emotions. Separate people from problem. Easier to negotiate when relationship is good. Communications lines should be kept alive. Positional Negotiation endangers ongoing relationship.
- Commitment – Ensure that the agreement is legally enforceable.

ALTERNATIVES TO NEGOTIATED AGREEMENT

- Alternatives constitute the limits of negotiation since the parties will rationally only agree to a negotiated solution if it serves their interests better than the pursuit of its no-agreement alternatives.
- BATNAs are not always readily apparent. Fisher and Ury outline a simple process for determining your BATNA—
 - (1) Develop a list of actions you might conceivably take if no agreement is reached;
 - (2) Improve some of the more promising ideas and convert them into practical options; and
 - (3) Select, tentatively, the one option that seems best.

Communication Skills

An Interactive Communications Model



The Listening Dilemma

- We speak at a rate of about 150 words per minute (wpm).
- But we can hear at a rate of about 1,000 wpm.



- This gives us a lot of extra time!
- What do we do with this time?

Following is a list of ten bad habits of listening.

- ☐ I interrupt often or try to finish the other person's sentences. [?]
- ☐ I jump to conclusions. [?]
- ☐ I am often overly parental and answer with advice, even when not requested. [?]
- ☐ I make up my mind before I have all the information. [?]
- ☐ I am a compulsive note taker. [?]
- ☐ I don't give any response afterward, even if I say I will. [?]
- ☐ I am impatient. [?]
- ☐ I lose my temper when hearing things I don't agree with. [?]
- ☐ I try to change the subject to something that relates to my own experiences. [?]
- ☐ I think more about my reply while the other person is speaking than what he or she is saying.

Tips can help you be a better listener

- Concentrate on what the speaker is saying, both with his or her words as well as with voice inflections, rate of speech, body language, etc.
- Try not to think about how you are going to respond to the other person while he or she is speaking to you.
- Interact nonverbally with the other person with small gestures or verbal affirmations.
- Do not interrupt or finish the other person's sentences.

The Three Levels of Communications

1

Vocabulary

2

Voice Inflections

3

Nonverbal Behavior

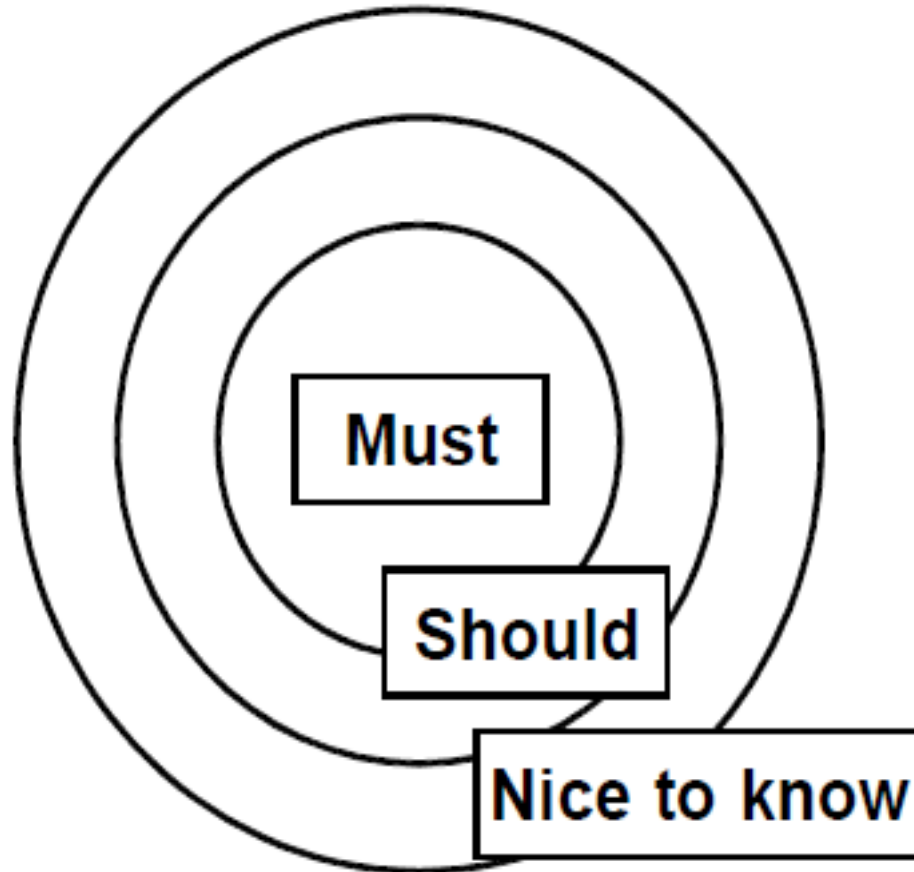
'Silence' in Effective Communication



“Speech is silver; silence is golden.”

- **Mindful silence** : Silence, when timed correctly, is the language of connection.
- **Creating space through Silence**
- **Awkward silence**: empty spaces in conversation causes strange, uncomfortable feelings and no one really likes it.
- **Negative Silence** : Being silent *when we should talk creates*
 - Masking
 - Avoiding
 - Withdrawing

Communications Circles



Meaning of Words

- A person is **fast** when he or she can run **quickly**.
- Colours are **fast** when they do not run.
- A friend is **fast** when he or she is loyal.
- A watch is **fast** when it is ahead of time.
- To be **fast asleep** is to be deep in slumber.
- To be **fast by** is to be near.
- To **fast** is also to refrain from eating.
- Bacteria are **fast** when they are insensitive to **antiseptics**

Avoiding Miscommunication

- -Telephone Game

Object

- helps clearly show how small misconceptions can end up making a huge difference.
- is used for classroom counseling lessons to help understand the impact of gossip and rumors.
- serves as a springboard for discussing the importance of active listening.

Communications overloads

RED

YELLOW

GREEN

ORANGE

BLUE

BLACK

Avoiding Communications overloads

- When communications are made using multiple forms and options
- Convey the intention
- Simplifying messages often improves communications
- If both the printed word and the colour were printed in were the same.

RED

YELLOW

GREEN

ORANGE

BLUE

BLACK

Communications Shutdowns-Avoid

- Don't be ridiculous.
- I don't need to answer that question
- I am not bound to answer
- That's not my responsibility
- We're not ready for that
- We tried that before and it didn't work
- It simply can't be done
- It's too radical of a change
- It's not really our problem
- It won't work here
- Okay, but if it doesn't work, you're the one who's going to get the blame.
- Are you crazy?

Interactive listening

- **Paraphrase the message to the speaker in order to confirm your understanding.**
- **Probe for missing information.**
- **Clarify any points that you might not completely understand.**
- **Remember the important points of the message for future application.**