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## Online Training

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- **E-Learning Modules**

All e-learning modules are accessible on: <https://www.inmediateproject.eu/platform/>

### **MODULE 1: Alternative Dispute Resolution (ADR) Legal Framework & Mediator's Responsibility**


-3 learning videos

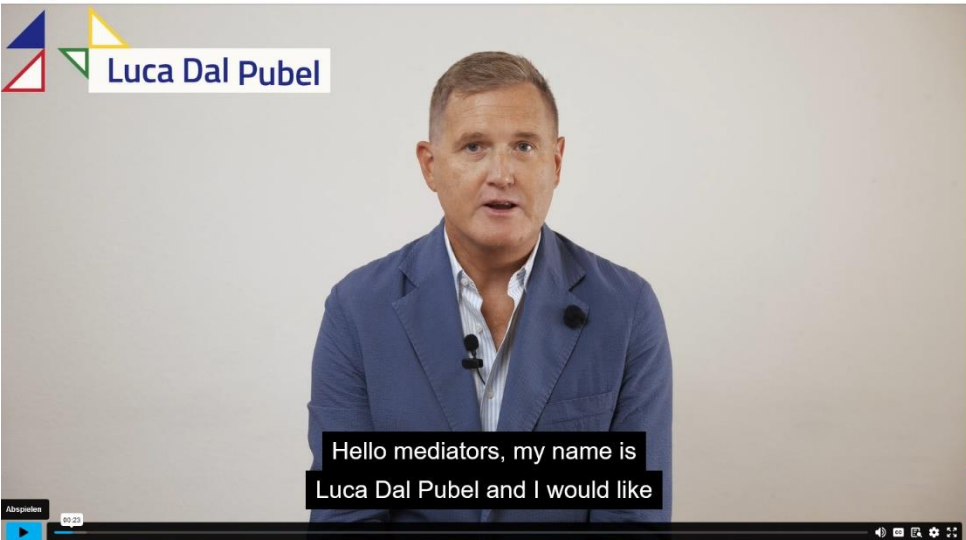
Topics of video-lessons

- General Overview on ADR and ADR Law
- EU Initiative: Directive 2008/52/EC on Mediation in Civil and Commercial matters
- Directive 2013/11/EU on ADR in Consumer Disputes
- Regulation 524/2013 on ODR for Consumer Disputes
- Regulation 1150/2019 art. 12 & 13

-Self-study Resources: already existing OER / law on Directive Civil and Commercial Mediation, Recommendation principles out-of-court settlement consumer disputes, Directive Alternative Dispute Resolution consumer disputes Report Alternative Dispute Resolution consumer disputes

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3 LESSONS

1

The European Union (EU) Legal Framework for Alternative Dispute Resolution (ADR)  
LUCA DAL PUBEL, PhD | Conflict Resolution and ODR practitioner, mediator, researcher and teacher at San Diego State University  
18 minutes

In the last two decades, legislative initiatives aimed at improving access to the civil justice system and making it more accessible through out-of-court mechanisms have been promoted by the European Union (EU) through recommendations, directives, and regulations. This lesson offers an overview and analysis of the legislative measures adopted by the EU to encourage the development and promotion of out-of-court.

DOCUMENTS

M1 Directive Civil and Commercial Mediation

M1 Recommendation principles Out-of-court settlement consumer disputes

2

The New Alternative Dispute Resolution (ADR) Framework for Consumer Disputes  
LUCA DAL PUBEL, PhD | Conflict Resolution and ODR practitioner

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## MODULE 2: Mediation styles and Code of conduct

-2 learning videos

Topics of video-lessons:

- Code of conduct and ethical standards
- Mediation styles

-Self-study Resources: already existing OER / law on European Code of Conduct Mediators, European Code of Conduct for Mediation Providers

-Test

**InMEDIATE** Back to all modules

**Aleksandra Winiarska, PhD**

Hello, my name is Alexandra.

**2 LESSONS**

**1 Code of conduct and ethical standards**  
AGNIESZKA OLSZEWSKA | Mediator, facilitator, conflict resolution trainer and consultant  
⌚ 27 minutes

**TOPICS**

- What is code of conduct and why do we need it?
- European code of conduct for mediators
- Principles of practice

The topic of the lesson is the mediation code of conduct. The lesson is divided into three main parts focusing on general assumptions and rules in mediation on individual and organizational levels, two Codes of Conduct on the European level, namely the European Code of Conduct for Mediators and European Code of Conduct for Mediation Providers, and ideas for reflection on the general principles applied to international and cross-border mediation.

**DOCUMENTS**

- 📄 M2 European Code of Conduct Mediators
- 📄 M2 European Code of Conduct for Mediation Providers

**USEFUL LINKS**

## MODULE 3: Culture and Communication

-5 learning videos

Topics of video-lessons

- Culture as a resource - understanding identity vis a vis Social Scripts (effects of gender, age, hierarchy, background, culturally shaped expectations towards the work of the mediator, etc.)
- Considering cultural stereotypes and taboos: how to manage them, intercultural dimensions, derivations for mediation
- Perception and the culturally sensitive mediator
- Curious communication – hearing what is said and unsaid
- Cultural Mediation models

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Resources: Kluwer Mediation Blog, Ubuntu Video, Identity and Values Exercise, Perception, Cultural and Awareness Exercises, Erin Meyer Culture Map, Cultural Mediation Models, Rapport and Listening, Listening exercise., Meditation and Mindfulness

Self-study Resources: already existing OER Presentation Mikk e.V., the 6-D model of national culture (Geert Hofstede),

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#### **MODULE 4: Conflict Analysis**

-3 learning videos

Topics of video-lessons

- 9 Stages of conflict escalation – Friedrich Glasl
- Stakeholder analysis including intercultural aspects and developing a tool for conflict analysis; working with hypothesis

Self-study Resources: already existing OER The Structural Causes of Workplace Conflict: Understanding the Implications for the Mediation of Workplace Disputes, Glasl's Nine-Stage Model Of Conflict Escalation

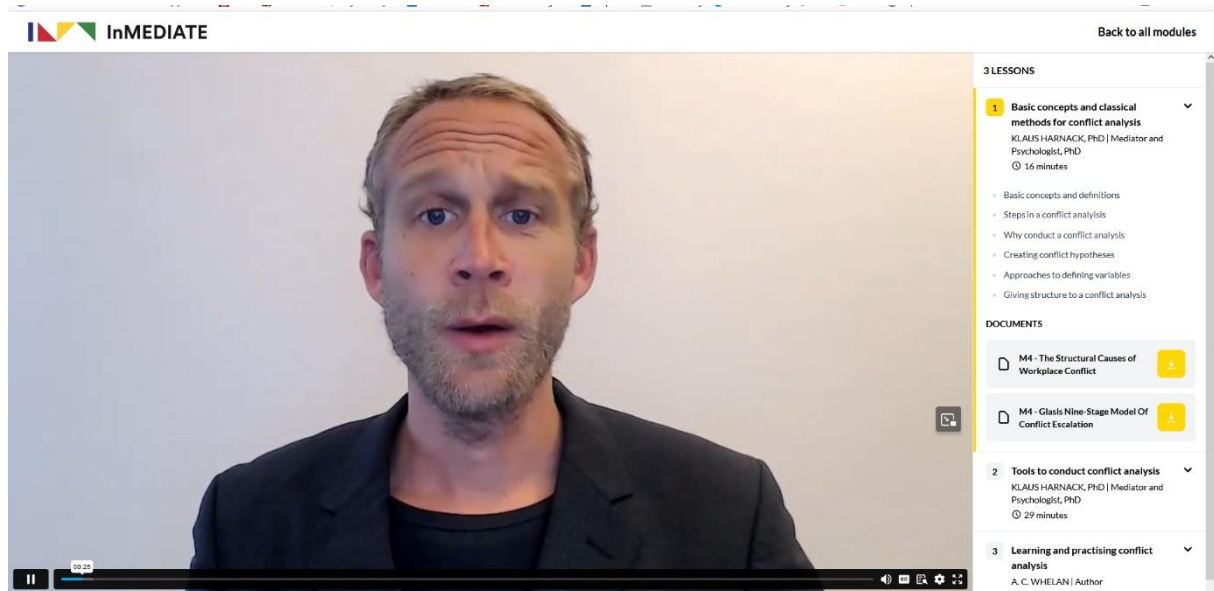
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## MODULE 5: Negotiation

-6 learning videos

Topics of video-lessons

- Cooperative Negotiation:
- Triangle of Interest / satisfaction
- BATNA: Concepts of William Ury
- 3-Dimensional Negotiation by David Lax and James Sebenius
- Manipulation and Untruthfulness in Negotiation: how does a Mediator go about it?
- Transculturalism

Resources: script Negotiation Techniques, role play instructions

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Dr.

Dear listeners, I welcome you very warmly.

6 LESSONS

1 Basics of communication and perception  
REINER PONSCHAB, PhD | Mediator, lawyer and trainer  
12 minutes

The process of communication in a negotiation is introduced. Also described is the significance of understanding perceptions of the involved parties, and how opinions on reality can vary.

DOCUMENTS

MS Negotiation Techniques.pdf

2 Basic conditions of negotiation  
REINER PONSCHAB, PhD | Mediator, lawyer and trainer  
7 minutes

3 Five building blocks for a successful negotiation  
REINER PONSCHAB, PhD | Mediator, lawyer and trainer  
10 minutes

4 Different negotiating styles  
REINER PONSCHAB, PhD | Mediator, lawyer and trainer  
26 minutes

## MODULE 6: Mediation Stages

-4 learning videos

Topics of video-lessons

- 4-stage mediation process
- Opening
- Exploration
- Negotiation
- Conclusion

Self-study Resources: already existing OER / law on UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018, IRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2008 on certain aspects of mediation in civil and commercial matters, The Role of Mediation in International Commercial Disputes, Premediation Preparation: A Key Component to Successful Dispute Resolution, Principles of Mediation as the Basis of this Process, The Evolution of the Opening Statement in Mediation, Sample mediator's opening statement, Cultural issues in mediation: a practical guide to individualist and collectivist paradigms et al.

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**4 LESSONS**

**1 The Pre-mediation Phase**

LUCA DAL PÙBEL, PhD | Conflict Resolution and ODR practitioner, mediator, researcher and teacher at San Diego State University  
⌚ 10 minutes

With the development of an increasingly global market favored by the evolution of the internet and information and communication technologies, cross-border transactions continue to increase all around the world. Such an increase in international transactions has also led to growth in cross-border disputes whose resolution is often difficult due to conflict of laws, different jurisdictions, the distance between the parties, and the high costs of ordinary justice. The search for alternative, fast, and less expensive dispute resolution mechanisms is leading to a new use of mediation, especially in connection to commercial and civil disputes. It is, therefore, necessary that international mediators acquire skills and learn strategies to deal with disputes where cultural and legal differences play a significant role. This lesson focuses on the pre-mediation phase and the necessary steps a mediator should take to prepare for the mediation, in particular in the case of co-mediation where two neutrals are appointed.

**USEFUL LINKS**

M6 - UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation 2018

## MODULE 7: Mediation Techniques

-3 learning videos

Topics of video-lessons

- Reflexivity in mediation
- Initial phases of mediation
- Specific techniques in the mediation process

Self-study Resources: already existing OER on Power and Cultural Difference, How to resolve cultural conflict: Overcoming cultural barriers at the negotiation table, How to Deal with Cultural Differences in Negotiation, Managing Cultural Differences in Negotiation

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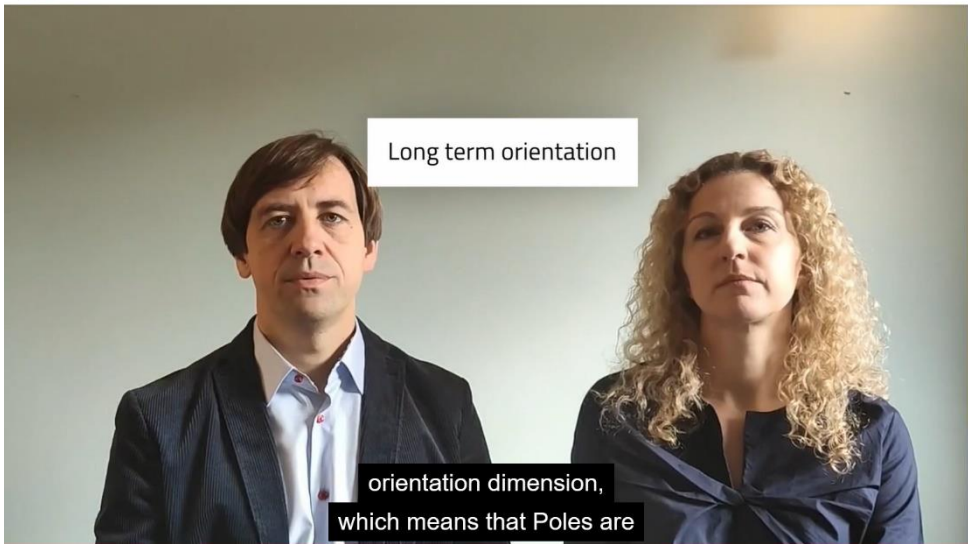
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**3 LESSONS**

**1 Reflexivity in mediation** ▼  
ALEKSANDRA WINIARSKA, PhD | Mediator, facilitator and conflict resolution trainer. Assistant professor at the University of Warsaw, sociologist and migration scholar  
🕒 22 minutes

**TOPICS**

- Cultural lenses
- Reflexivity in mediation
- Positive connotation

The topic of the lesson is reflexivity in mediation. It is divided into three main parts focusing on cultural lenses, the use of reflexivity in international mediation and applying the technique of positive connotation. We talk about attribution errors and how to deal with them in conflict.

**USEFUL LINKS**

🔗 [M7 - Power and Cultural Difference](#) 📄

**2 Initial phases of mediation** ▼  
KONRAD SOBCZYK | Mediator, facilitator, conflict resolution trainer and consultant  
🕒 27 minutes

**3 Specific techniques in the mediation process** ▼

## MODULE 8: Co-mediation

-3 learning videos

Topics of video-lessons

- Developing collaboration between mediators
- Personal and cultural compatibility in co-mediation
- Models of cooperation and organizing co-mediation

Self-study Resources: already existing OER - Joe Epstein and Susan Epstein on Co-mediation, Scottish Community Mediation Centre Briefing Papers: Co-Mediating, Co-mediating - Giving It a Chance, Practice Guidelines for Co-Mediation: Making Certain that “Two Heads are Better than One”, Bridging Worlds: Culturally Balanced Co-Mediation et al.

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3 LESSONS

1 Developing collaboration between mediators

AGATA GOJSKA, PhD | Mediator, facilitator, conflict resolution trainer and consultant. Assistant professor at the University of Warsaw, sociologist. 26 minutes

TOPICS

- Introduction
- Collaboration development stages
- Performing Phase
- Storming Phase
- Norming Phase
- Performing Phase

In the first lesson we look at a natural dynamic of cooperation which is irrespective of the mediators' competence and personality. We show two models of this dynamic. We describe in detail the stages of developing cooperation. We point out the resources needed for successful cooperation.

USEFUL LINKS

- MB - Co-mediating - Giving It a Chance
- MB - Joe Epstein and Susan Epstein on Co-mediation

## MODULE 9: Online Dispute Resolution (ODR)

-3 learning videos

Topics of video-lessons

- General Overview of ODR
- ODR modalities: Asynchronous vs. Synchronous and types of ODR
- Online Mediation Skills
- Online Mediation Platforms

Self-study Resources: already existing OER - Online Dispute Resolution and the Future of Justice, Artificial Intelligence and the Future of Dispute Resolution: The Age of AI-DR (2021) 1, Online Dispute Resolution, Ordering Online Arbitration in the Age of Covid ... and Beyond, The Effect of Electronic Mediation Outcomes, Transforming Conflicts Online in Cross-border Disputes

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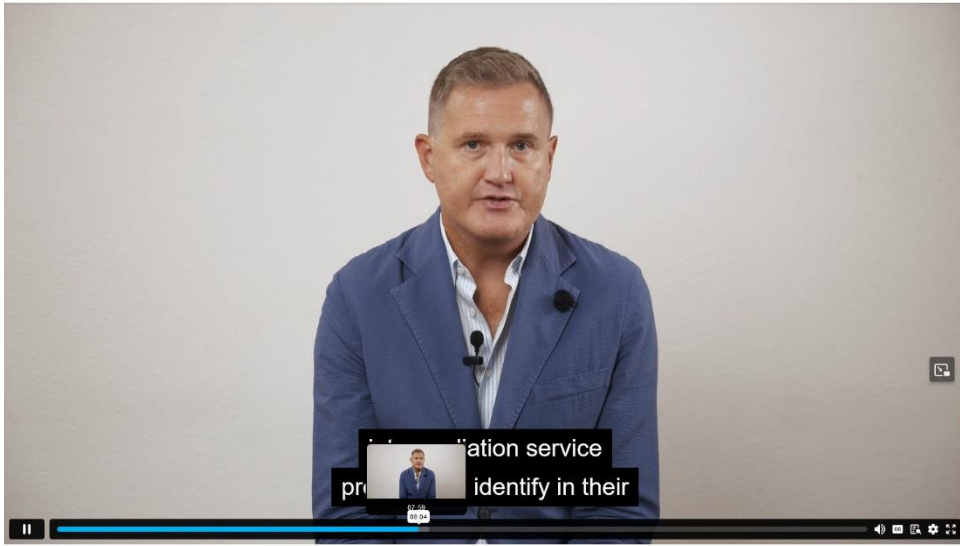


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identify in their

**3 LESSONS**

**1 Online Dispute Resolution (ODR) as a Solution to Cross-Border Disputes**  
LUCA DAL PUBELE, PhD | Conflict Resolution and ODR practitioner, mediator, researcher and teacher at San Diego State University  
16 minutes

The evolution of Information and Communication Technologies (ICT) and the Internet has promoted the development of new dispute resolution systems that use technology to resolve disputes that occur online or offline. Participants will learn the basics of Online Dispute Resolution (ODR) including a brief history and the definition and meaning of ODR.

**USEFUL LINKS**

[M9 - Online Dispute Resolution and the Future of Justice](#)

[M9 - Artificial Intelligence and the Future of Dispute Resolution: The Age of AI-DR \(2021\) 1](#)

**2 Main forms of Online Dispute Resolution**  
LUCA DAL PUBELE, PhD | Conflict Resolution and ODR practitioner, mediator, researcher and teacher at San Diego State University

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#### ANNEX:

Training Material developed for module 3

Training Material developed for module 5

Tests for all modules

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## *LESSON 1 - Understanding Culture - Identity and Values Exercise*

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#### Instructions

- Trace each of your hands on a piece of paper
- On the tips of each finger and thumb on the first page note 5 key aspects of your identity
- On the finger tips and thumb on the second page, write down 5 values of greatest importance to you

#### You will need:

- 2 pieces of blank paper and a pen
- Your curiosity and openness!

#### Reflections:

What did you notice as you did this exercise? How did you feel?

Was one hand more challenging than the other and if so, why might this be?

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## *LESSON 1 - Understanding Culture – Kluwer Mediation Blog*

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Kluwer Mediation Blog is a global mediation resource sharing topical discussions, reflections and articles on mediation around the world. International leading experts in the field share their contributions on a regular basis, making this a truly unique and unmissable port of call for engaged and interested mediators.

Here are a few links to get you on your way, highlighting [Culture](#) and [Communication](#). Happy reading!

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## LESSON 2 – Cultural and Awareness Exercises

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The exercises below are shared from a wonderful resource, “Exploring Culture: Exercises, Stories and Synthetic Cultures,” written by Hofstede, G., Hofstede, G. J. and Pedersen P. You can find these exercises on pages 16 and 17.

#### *What Would you Do?*

*Here are 2 short incidents. Read them and choose from the option how you would act. Then think about what values guided your choices. In some cases, difference values might make you hesitate between different options.*

#### *Train or Car?*

*You are a commuter. The car trip to work takes approximately one hour, the train ride approximately an hour and a half. Do you prefer to go by car or by train?*

- 1. By car, because if I travel by train, people will think I can't afford a car.*
- 2. By car, because it is faster.*
- 3. By car, because it is private.*
- 4. By car, because people in my position do not travel by public transport.*
- 5. By train, because it is safer.*
- 6. By train, because it allows me to get work done while traveling.*
- 7. By train, because I might meet interesting people.*
- 8. By train, because it is better for the environment.*
- 9. Either way is fine, whichever is cheaper in the long run.*

#### *A Virtual Contact*

*On the Web you have found the site of somebody you might want to start a business relationship with. How would you establish the first contact?*

- 1. Write a formal, polite paper letter on your company's letterhead.*
- 2. Send an email starting “Dear Mr. so-and-so” and ending “Kind regards, X.”*

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3. *Send an email starting “My name is X and I have a proposal that might interest you” and ending with your first name.*
4. *Have your secretary arrange a phone call.*
5. *Call the person on the phone yourself.*

### *Observation and Interpretation*

*The core of intercultural awareness is learning to separate observation from interpretation. For instance, consider the following dialogue. Suppose that you are from a foreign country, looking for the train station, and meet a woman on the street.*

*You: Excuse me.*

*She: (pauses, looks at you fleetingly and walks on)*

*You: (walk up next to her) Excuse me (she looks down). Do you know the way to the railway station?*

*She: (points vaguely) Excuse me. Walk that way and turn left.*

*You: (smiling) Thank you.*

*She: (walks off in the other direction)*

*What would you make of this?*

- *She was afraid of you.*
- *She disliked you.*
- *She was being respectful to you.*

*Your response will depend on your prior experiences and your own country of origin. The usual reaction would be to forget her actual behaviour but remember the intention that you attributed to her, for example, “She was afraid of me.”*

*If you are cross-culturally aware, you remember her behaviour and suspend your attribution of meaning until you know enough of her culture. Her looking away might indicate any of the three suggested intentions and maybe others. It might, for example, be gender-related, or looking people in the eye might be considered impolite in her country.*

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**Can you think of additional examples similar to the situations above from your own experiences? Stretch yourselves!**

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### *LESSON 3 - Perception, High and Low Context Cultures, Monochronic vs Polychronic Time*

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[Erin Meyer](#) – Visit Professor Meyer’s website to gain access to various resources, tools, videos and much more.

[Getting to Yes Across Cultures](#)

[How Cultures Approach Leadership](#)

[High-context vs Low- Context Societies](#)

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#### *LESSON 4 - Cultural Mediation Model – the 4 B's*

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[The International Mediation Centre for Family Conflict and Child Abduction](#) (MiKK) - MiKK is a non-profit organization providing multi-lingual and free-of-charge support, advice and referrals to mediation for parents in cases of cross-border contact, custody and relocation conflicts, as well as in cases of international parental child abduction.

MiKK organizes bilingual and bi-cultural mediations worldwide for parents in accordance with its internationally renowned mediation model using mediators who have been specially trained by MiKK. MiKK offers information, training and consultation to judges, lawyers, social services and consular representatives.

[Steinbeis Mediation](#) – European organisation specializing in conflict management, mediation, internal and cross-company cooperation, as well as in the public sector. A source of highly trained mediators equipped with the international and intercultural mediation skills. Like MiKK, Steinbeis is aware of the need for cultural sensitivity and the developing of a 'common' language in cross-cultural mediation cases.

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## *LESSON 5 - Communication in Mediation: Rapport, Listening, Cues, Mediators as Models*

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Listening level challenge:

This is an exercise to try with family and friends or, in your daily interactions. Actually, this is more of an invitation to employ your heightened sense of self-awareness and reflect on the ways you engage with the world around you.

Please remember the exercise from this lesson which asked you to recall a person you loved being with as a child. Recall how that person made you feel...

Typically, we enjoy a elevated sense of wellbeing when we spend time with people who offer us their presence and attention. This helps us feel respected, important, more confident and secure.

Working on this assertion, how often do you find yourself distracted in a conversation? This could be an internal thought, which links to Level 1 listening, or could be a physical distraction, such as when we multitask and try to listen at the same time. How often are we on our mobile phones?

A classic example many of us may relate to involves the frequency with which we are busy doing other things whilst our children are speaking to us. On a scale of 1 to 10, with 1 being low and 10 being high, imagine how a child feels in these moments? How might less focused attention impact them – in the short and longer term? How do you feel when you feel someone isn't listening to you?

The challenge and invitation here is to become aware of the levels of listening you are exhibiting in your countless daily interactions. Notice when you move from level 1 to level 2 listening – when is your internal dialogue noisy and when is it quiet? How does your environment contribute? How often do you reach level 3 listening?

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Developing our self-awareness promotes better engagement with our family, friends, colleagues and strangers even, displaying respect and forging more meaningful, trusting and empathic relationships.

For more information on levels of listening, refer to the resources section of this module [Co-Active Coaching: The Proven Framework for Transformative Conversations at Work and in Life](#)

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## *LESSON 5 - Communication in Mediation: Rapport, Listening, Cues, Mediators as Models*

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### Meditation and Mindfulness

There are countless resources available online, through podcasts and literature to impart wisdom in the area of meditation and meditative practice.

Here are a few to get you on your way:

[Headspace](#) – one of the original and arguably most well recognised meditation app's, Headspace provides a range of guided meditation exercise and programmes, which can be tuned to your needs. Trials of the service are often free and then lead to a reasonably priced monthly or annual membership fee.

[Oxford Mindfulness Centre](#) – offering a range of free audio and video resources including mediation, yoga practice, breathing and other mindfulness exercises.

[SAJE Wellness](#) - provides a range of essential oils and remedies to channel your inner calm. There are of course numerous other companies providing similar products in your location, so see what you can find!

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## *LESSON 5 - Communication in Mediation: Rapport, Listening, Cues, Mediators as Models*

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Out beyond ideas of wrongdoing, and right-doing, there is a field. I will meet you there.  
-- Rumi, Persian Poet

### RAPPORT

An [interview](#) with Emily and Laurence Alison, authors of *Rapport: The four ways to read people*

### LISTENING

Nancy Kline, author of *Time to Think: Listening to Ignite the Human Mind* offers range of [videos](#) supporting her writings on listening

### COMMUNICATION and PERCEPTION

Kluwer Mediation Blog offers a selection of excellent articles on mediation from global experts in the field. Contributor Joel Lee, of the National University of Singapore, Faculty of Law, has shared a series of entries focussing on [NLP – Neuro Linguistic Programming](#). These fascinating articles touch on the topics of establishing rapport, language, nonverbal communication and perception to name only a handful!

[Nonviolent Communication](#) (NVC) – NVC a communication philosophy developed by American psychologist, peacemaker and author, Dr. Marshall Rosenberg. The 4 pillars of NVC invites the sender and receiver of communication to reflect on their **observations**, **feelings**, **needs** and ultimately, **requests** to each other. This simple formula is an invaluable tool for any mediator and you can find a wealth of resources on this topic through the link above which takes you to the global organization, the Centre for Nonviolent Communication.

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## *LESSON 1 - Understanding Culture – An interview with Desmond Tutu*

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Ubuntu - The Essence of Being Human – short [video](#)

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## Negotiation Learning Material

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# Negotiation

## Negotiation techniques and skills

**Dr. Reiner Ponschab**  
Certified mediator / lawyer

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## 1. Basic questions of negotiation

### 1.1 When is there a trial at all?

Not all communications called "negotiations" are negotiations according to our understanding. For example, a negotiation requires one or more of the following criteria:

- Negotiating partners' willingness to negotiate
- Mutual dependence in achieving goals (i.e. no strong power divergence) - "interdependence".
- Diverging interests
- Different ideas about how to achieve the goal
- Agreed settlement as the aim of the negotiation

If one party does not need the other (i.e. there is no mutual dependence) in order to reach the goal - be it because one side has no influence on the achievement of the goal or the other party can achieve it alone, e.g. through the use of power or force - there is no mutual dependence and thus no negotiation situation. In such a situation, one party takes what it needs.

If the parties have the same interests, they may nevertheless have divergent ideas about how to reach the goal, and this too makes negotiation necessary.

It also follows from the above considerations that a negotiation requires roughly balanced power relations. As a rule, you will not be able to negotiate with a landlord who has 40 applications. He will dictate the conditions of the tenancy to you.

This makes it all the more important to know how to strengthen one's own power situation. We have explained this in more detail in Principle 6 of the Harvard Concept (2.2.2).

### 1.2 Framework conditions of a negotiation

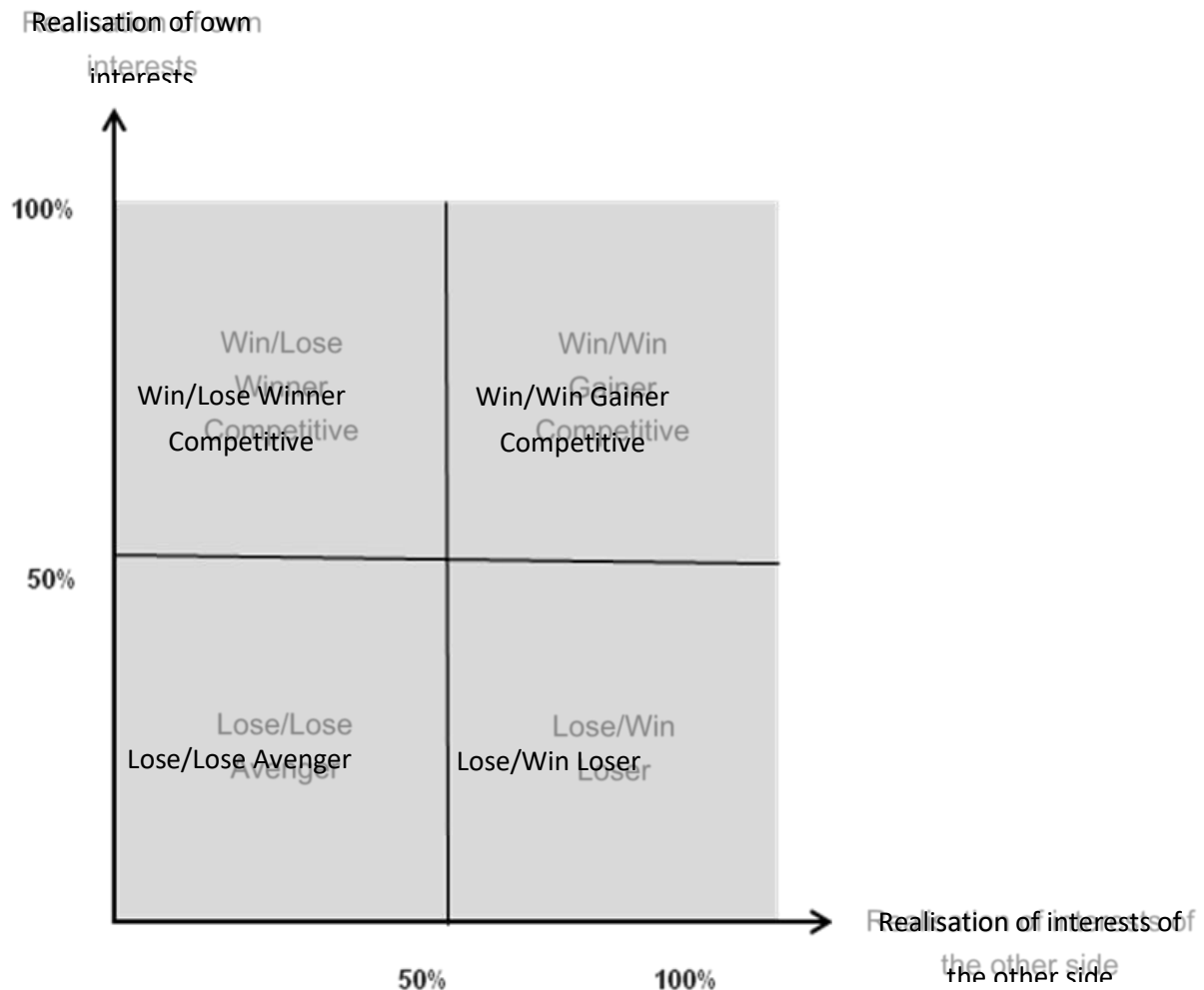
Before the start of a negotiation it is important to clarify whether the framework conditions, which are mostly of an external nature, i.e. in particular whether the place, time and external conditions are right. We have summarised the questions that need to be clarified in this context before a negotiation in a questionnaire (see Chapter 5. Preparation)

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## 2. Types of negotiation



### 2.1 Winner - competitive negotiation style (Win/Lose)

For the winning party in negotiations there is only one goal: their own victory. This inevitably results in the defeat of the other side. To achieve victory, they also use cunning, power, manipulation and surprise attacks.

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### Typical behaviour of the winner in negotiations

- Extreme initial situations
- Tactical use of emotions
- Manipulation
- Positional Thinking
- Great distrust
- Creating time pressure

In observing the behavior of competitive negotiators, we have been able to identify several rules for their success, some of which we reproduce below without claiming to be exhaustive:

#### 1. Submit the first offer!

The first offer determines the size of the pitch and you shouldn't leave that to the other side.

#### 2. Shake the first offer!

If you don't want to make the first offer, it's important to shake the other side's offer.

#### 3. Do not make your counteroffer with round amounts, but with comma amounts or with ranges!

If the other side offers € 450.000,- and you answer with € 492.123,00 after some calculating and searching in your documents, this makes a well-founded impression.

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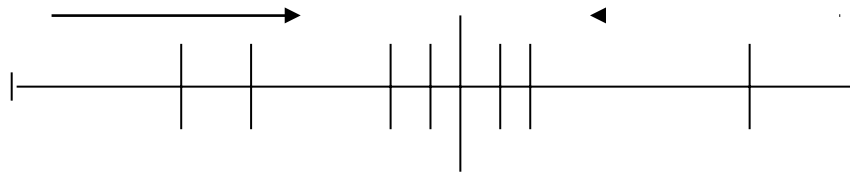
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#### 4. Make your price concessions in smaller and smaller steps

It seems important that with each price concession the size of your steps gets smaller, so as to give the other side the feeling that you are slowly but surely reaching your limit. On the other hand, if you suddenly take a step that is larger than the previous one, your partner will get the impression that you still have a lot of air. In technical jargon, this approach is called a negotiation dance.

Graphically, this movement looks like this in smaller and smaller steps:



Negotiation Dance

#### 5. Turn large amounts into small units!

If you are concerned that the other side will be frightened by the amount you are asking for, simply break that amount down. A few examples:

If it is about interest, do not mention the amounts, but the amount of interest. If it is about annual payments, it is better to mention the monthly amounts. For land prices, you can mention the price per square meter or the monthly charge. These are all ways to avoid the shock of the large amount with the negotiating partner.

#### 6. Give it in writing!

The written word has great power, thus a price list reinforces the authority of the price quoted. The price of something seems less negotiable when you hand over a printed price list than when you quote a suggested price. From experience, people are less likely to question what is written than what is communicated to them verbally. Even if you say something orally, it is always good to hand over the content of your words in writing at the same time, because then your words receive confirmation.

#### 7. Be reserved!

As a reluctant buyer or seller who shows little interest in buying or selling an item, you will usually succeed in narrowing the other side's negotiating range in your favor.

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## 8. Demand as many concessions outside the price as possible!

Skilled competitive negotiators increase the complexity of the negotiation by offering or demanding concessions. This enables them, as buyers or sellers, to offer the other side a favourable price, which they then relativise by demanding additional services. Often the complexity created leads to the other negotiator being overwhelmed. The latter then only looks at the price he wants and does not notice that the price is actually increased or reduced by the wishes for additional services asserted by the other side and thus changed to his disadvantage.

This can be seen in the following example:

Antique dealer V has an old English desk on offer. His asking price is at least 10,000 euros, but he hopes for 12,000 euros. When buyer K enters the shop and is interested in the desk, V has no idea that K has just attended a negotiation seminar.

K: A beautiful piece!

V: Yes, a unique piece from England, around 1850. Something like that is really rare today. Of course, it has its price...

K: Of course. I guess around 7,000?

V: Oh no, around 13.000 Euro I really must ask for it!

K: That's too much. But the purchase price is not the only problem. I see that the good piece has to be reworked and re-stained. Besides, I live 150 km away in Frankfurt and can't transport such a heavy desk.

(K adds two additional elements to the negotiation (restoration, transport), the negotiation becomes more complex).

V: These are minor problems. The restoration and - if you wish - a new staining can be done quickly in my workshop. And with my truck, I can deliver the desk to Frankfurt free of charge if necessary.

(happy about an apparently seriously interested buyer, V misses the problem of complexity and focuses only on his "success factor", the purchase price. K has received two concessions for nothing).

K: Mmhhh. That's great, of course). The price remains a problem, though. How far can you accommodate me there?

V: Well, because it's you: 11,500 euros.

K: No, I can't afford that. Too bad, I would have wanted to pay about 8,000 euros.

V: 11,000, and the table is yours.

K: O.K., 9,000 euros, half immediately, the other half in a year.

(K increases the complexity again by introducing "payment terms" as a subject of negotiation).

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V: With me there is actually only cash payment.  
(Fixed on the purchase price, V concedes in principle also the payment in instalments).  
Let's cut the knot in the middle: 10,000 euros, my final asking price! (V has arrived at his initial conception).  
K: And what about my installment?  
V: Whatever. But until full payment the table remains my property!  
K: O.K. We almost agree. But you know what? I'll take the table as is. You don't have to restore it. But you'll give me that desk chair in the back for free. Agreed? (K tries to trade back the "restoration" concession).  
V: I can't give you the chair for nothing. It actually costs 1,000 euros. But if you forgo the restoration - okay, then I'll let you have the chair for 500 euros.  
K: Agreed. And everything of course you deliver me a big bottle of the best furniture polish? (One last time the complexity is increased).  
V: All right.  
(V doesn't want to let it fail because of the 50 Euro for the furniture polish). Then let's go to checkout.

### **What is the result?**

V has just realised his target price of €10,000 and is relatively satisfied. In fact, he has realised less than €9,000, if you take into account the financing costs for the hire purchase, the unmotivated discount of €500 for the chair, the expensive transport to Frankfurt and the bottle of furniture polish. How did K manage this? He overcharged V by complicating the subject matter of the negotiation. V could not fit these ancillary services into his negotiation scheme and paid dearly for this mistake in his conduct of the negotiation.

### **Consequences for the competitive negotiator**

- **Create complexity!**

A negotiation should always be about more than one subject (e.g. not only about the price). The trained negotiator therefore adds additional points that he has thought about/thought of beforehand. This should also include points that are not really important (e.g. payment in instalments). This demand can be given up later as a concession.

- **Win through complexity!**

An inexperienced negotiator is quick to make out-of-price concessions because they can't assess them in terms of value. Take advantage of this and focus on non-price concessions that are more than worth their "price".

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- **Reduce the complexity at the end of the negotiation!**

In the final phase of negotiations, try to exchange concessions for price concessions. You can only win, because you can always withdraw these concessions ("Oh, if you only want to give me 500 euros for the restoration, then it should stay at the old price and you restore the desk anyway").

Certainly, the question for the successful negotiator is how to counter this game of complexity. We have presented our suggestions for this under Chapter 7.5.



## 2.2 The gainer - cooperative negotiation style

Cooperative negotiation is rational negotiation. For the cooperative negotiator it is not important to get more than the other side (as for the competitive negotiator), but gain as much as possible. Under this condition, they do not mind if the other side also gets a good result.

### 2.2.1 Basic beliefs of the cooperative method

- There is no objective reality, but **only subjective** truths and ideas.
- What **really** matters is what people **want**.
- Everybody wins the most when **they both win**.
- We do not focus on problems, but on **solutions**.

### 2.2.2 The Harvard Concept

Probably the most significant implementation of the principle of cooperative negotiation is realized in the so-called Harvard Concept. This is the German title of the book written by Roger Fisher together with William Ury and Bruce Patton, which was published in 1981 under the title "Getting To Yes". It is not only the world's best-selling but also the most influential book on negotiation management, which became the basis of modern negotiation theory and rests on the pillars of interest orientation, process control and value creation.

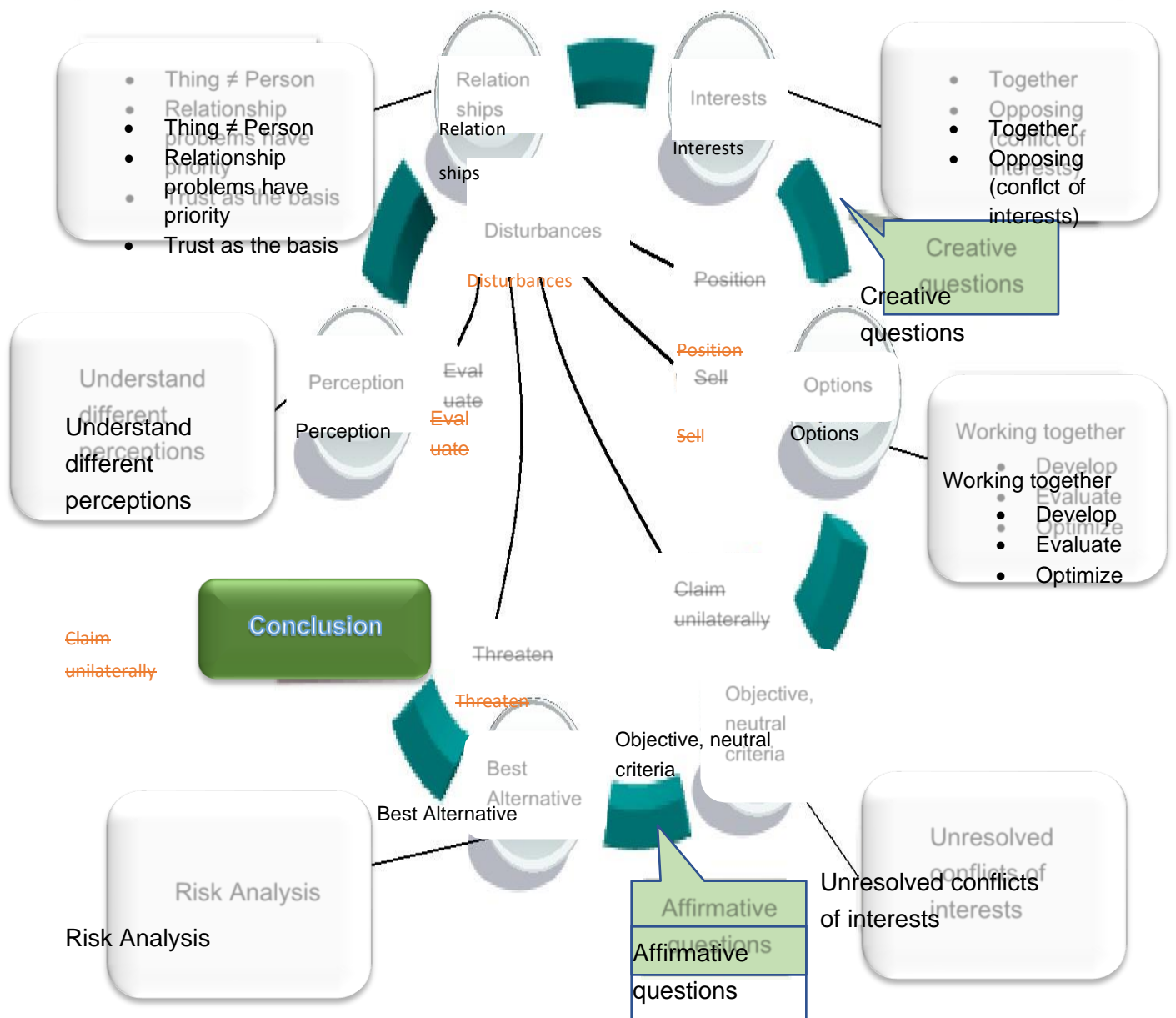
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# The Harvard Concept



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## Principle 1

### **Do not concentrate on objective facts, but on the perceptions of the parties (subjective views)!**

Each negotiating partner sees the subject of the negotiation from his or her own perspective. The respective sensitivities, experiences, convictions and values as well as the cultural environment shape the way a negotiator perceives the subject matter of the negotiation. Consequently, there is no single, "correct" view of things. However, we tend to believe that our own perceptions are the correct ones.

Negotiators who manage to put themselves "in the other person's shoes" and thus achieve a change of perspective seem to be particularly successful. This promotes understanding for the other party and gives him the feeling of being understood, which does not normally happen in positional negotiations, where each party assumes to be right and therefore does not seek to understand the other side. The cooperative negotiator is not concerned with being right, for that criterion governs legal decisions but not negotiations. Yet negotiators from legal backgrounds often worry that trying to understand the other side will be interpreted as agreeing with their view. Arguably, one of the most important insights of collaborative negotiation is that there is no "right or wrong," only different points of view, each of which is correct from the perspective of the particular observer. The point is to see the respective viewpoint from the perspective of the recipient and not to interpret it arbitrarily.

The famous sentence of the Austrian behavioural scientist and Nobel Prize winner Konrad Lorenz applies here, which reads in part:

**"Heard is not understood, understood is not agreed".<sup>1</sup>**

For the relationship between the negotiating partners and thus for the progress of the negotiation, it is therefore important not to dismiss the viewpoint of the other negotiating partner as "nonsensical" or "absurd". It would be better to use one's own communicative skills to understand the other person and to make oneself understandable for the other person.

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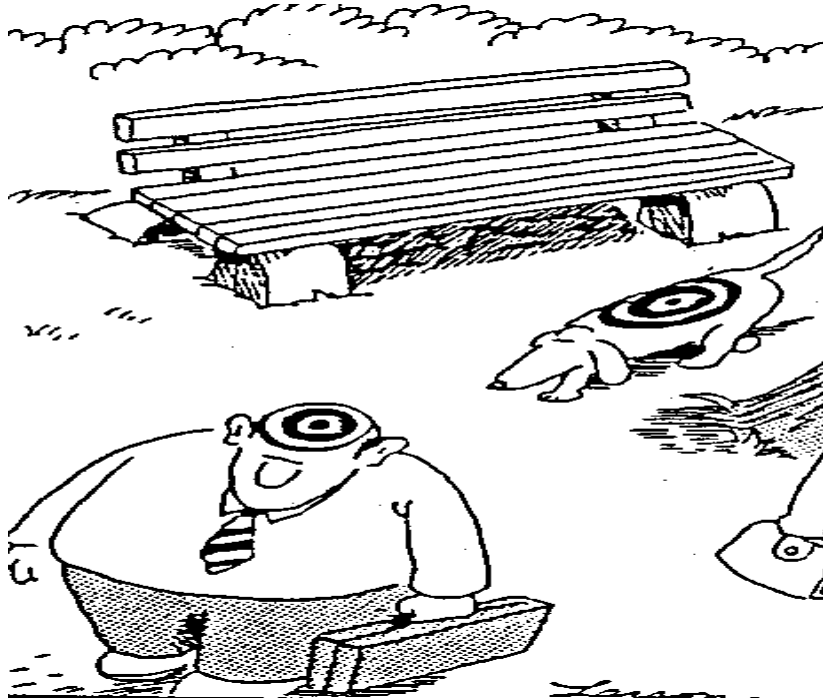
1 In full, the quote reads, "Said is not heard, heard is not understood, understood is not agreed to, agreed to is not retained, retained is not applied, applied is not retained."

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## How birds see the world



### Hence the recommendations:

- Clarify the perceptions (views) of the negotiating partners
- Establish consistent perceptions!
- Understand and accept different perceptions!

## Principle 2

### **Distinguish between the subject of the negotiation and the relationship between the negotiating partners!**

Mixing factual problems with relationship problems damages the relationship and paralyzes progress on the matter. A functioning relationship, however, is a prerequisite for the efficient handling of factual problems.

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### Hence the recommendations:

- Recognize relationship problems and treat them separately from factual problems!
- Check the relationship with the negotiating partner for mutual trust, mutual acceptance and functioning communication!
- Work through any relationship problems that arise before you start dealing with the factual problems!
- Build mutual trust by behaving in a trustworthy manner regardless of the behavior of the negotiating partner!

### What creates trust?

- Trust through "advance performance
- Predictability
- Understanding one's own interests and those of others
- Positive feelings (e.g. sympathy, affection, respect)
- Open information

### Principle 3

#### Do not focus on positions, but on interests!

Positions are behavioural demands on the other side. Behind every position lies an interest (motive, motivation), i.e. the actual concern of each negotiating partner. Different interests can usually be "reconciled" by selecting appropriate realisation options, different positions rarely can. Negotiating from different positions usually results in competitive disputes, which we call "haggling". Interest-based negotiation, unlike positional negotiation, is open-ended with respect to the outcome of the negotiation, thereby opening the door to different possible solutions. Positions are supposed to demonstrate strength to the outside world, but in fact they reveal weakness, because they arise from the fear that without holding on to positions, one will leave the negotiation with a bad result.

### Hence the recommendations:

- State your own interests openly without taking a position.
- Explore the positions of the other side for the interests behind them (Why? What for? To what end?).
- Emphasize common interests.
- "Park" conflicts of interest for now.



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## Matrix of interests

Interests of the Partners				
Own Interests				

- + = Convergent interests  
 -- = Opposing interests  
 O = Neutral interests (which correspond or do not conflict)

## Principle 4

### Develop as many options as possible first, evaluate and decide later!

Problem solving that best serves the interests of the parties involved requires the creative development of ideas by all persons involved. This creativity is often hindered by:

- A snap judgment (danger of positional bias),
- the search for "the" right solution,
- the assumption that the "pie" is limited,
- the idea that others should solve their own problems.

### Hence the recommendations:

- Formulate the "creative question" (open question for possible solutions, something like this: "What solutions are there that satisfy my interests and yours?")!
- Do not be satisfied with the first best solutions, but look for further possibilities, models and variants ("brain storming")!
- Look for possible solutions that also take into account the interests of the other party!
- Postpone the assessment of possible solutions until the creative potential of all persons involved has been exhausted!

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**What creative methods are there for finding solutions in negotiations?**  
Here are two examples:

### Brainstorming

- Collect ideas for finding solutions on cards.
- Any idea is welcome (the newer the better).
- Criticism and "killer phrases" are forbidden.
- Ideas are combined and further developed.
- First collect ideas, then evaluate them together.

### Mindmapping

- Question is in the middle.
- Keywords on the branches are "hangers" for other thought complexes.
- From each main branch go off secondary branches, which in turn branch out.
- From the abstract to the concrete.
- Acceptable ideas are derived from the idea tree, formulated and further negotiated.

### Example of mind mapping

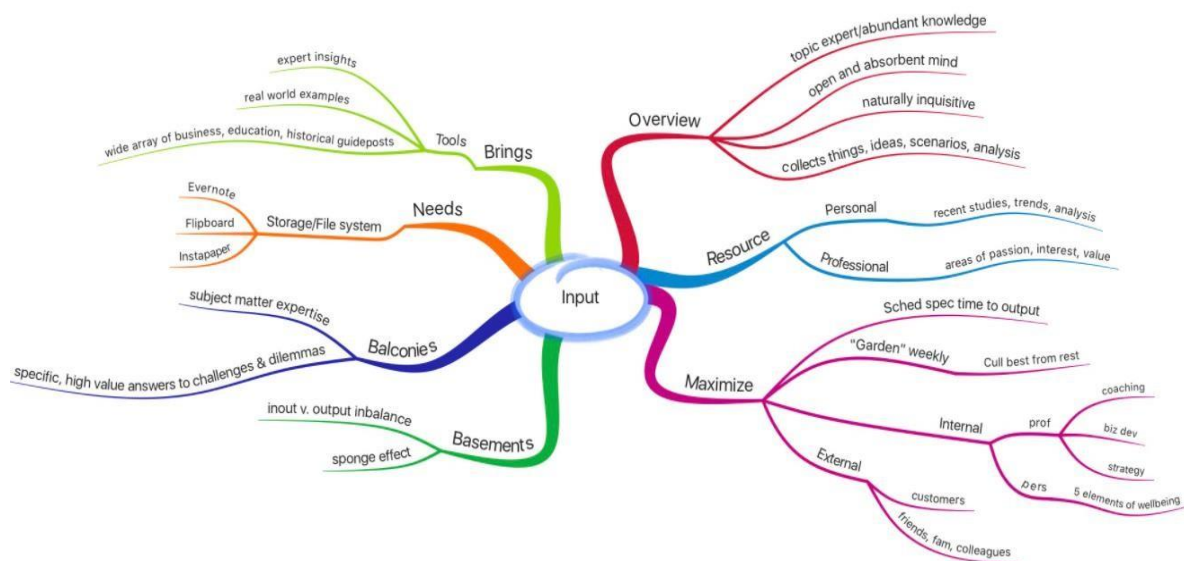


Image Source: [strengthslauncher.com](https://www.strengthslauncher.com)

### Principle 5

#### Resolve conflicts of interest by using objective criteria and neutral procedures

Conflicts on the merits arise from opposing, mutually contradictory interests of the

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negotiating parties. Ruthless assertion of one's own interests at the expense of the negotiating partner as well as sacrificing one's own interests in favour of the other side always generates "bad blood". Such arbitrariness must be replaced by comprehensible,

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reasonable and traceable criteria or processes. Insofar as the application of these instruments results in the "prevailing" of one party's ideas, this is not based on the fact that one party prevails, but on the objective-rational criteria established by a third party or the result of a process chosen by both parties, but which you cannot influence unilaterally.

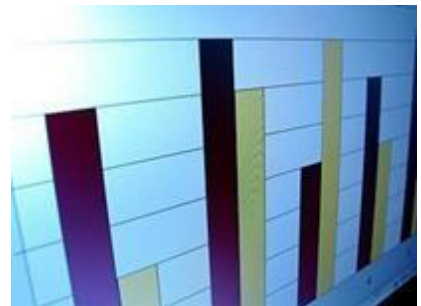
### **Hence the recommendations:**

Look for generally accepted norms, values and legal principles that can be used as objective decision-making criteria because they are

- are independent of any partisan interests of any individual negotiating party,
- apply to all negotiating partners involved and can therefore be binding!

### **Examples of objective criteria (standards)**

- Expert opinion
- Local custom
- Statistics
- Standard market practice
- Standards
- Sitten
- Industry standards
- Tradition
- Average prices



Insofar as objective criteria do not lead to a decision, neutral procedures should be used which also lead to a decision, whereby the choice of procedure is made by both parties in agreement!

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## Examples of neutral procedures

- Random procedure
- Dice
- Loose
- Roulette
- Adjusted Winner
- Third party decision/estimate
- Auction
- One shares, the other chooses
- Adjusted Winner
- Averaging
- High-low Arbitration



## Principle 6

### **Decide for or against a negotiation agreement by comparing it with your best alternative to the negotiation outcome (BATNA)!**

A negotiated settlement is a success if it is better than the best alternative that can be reached outside the particular negotiation. No one can be required to agree to a negotiated settlement to which the party has a better alternative. The best alternative is a decision criterion for or against a negotiated settlement that is independent of the other party.

But a BATNA is not cast in stone. You can change something about it and thereby improve your own (power) position. In the following we want to give some examples:

#### **1. Change in the negotiating environment**

If the other side is much more powerful, you can strengthen your situation before the negotiation by changing the terms outside the negotiation in your favor.

Charlene Borlefsky, U.S. Trade Representative, comments:

"Tactics at the negotiating table, they're just cleanup. What matters is the underlying substance, the great effort away from the negotiating table to create the most promising starting position for an encounter with the negotiating partner."

In order to change the negotiating environment and thereby also the balance of power, you can for example

- extend the negotiation to adjacent areas (e.g. by negotiating additional services)

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- offer added value during the negotiation (e.g. offer to join your network)
- obtain and possibly give information (e.g. preferences of a participating person)
- involve reference persons (with influence on the other party)
- strengthen synchronisation (e.g. by talking about common interests)
- seek/create a good external environment (e.g. negotiate in a quiet place in nature) that can create a better emotional relationship.

## **2. Open up other areas of negotiation (make the cake bigger)**

It can often be useful to make not only other people, but also other areas (over which you have significant influence) the subject of the negotiation. If the negotiating partner can obtain an additional benefit, he may be particularly cooperative on the original topic of negotiation.

## **3. Gaining information through optimal preparation**

Identify interests, options, needs of the other side e.g. through contacts with informants, internet research etc.

## **4. Reinforcement of specialist knowledge (technical competence)**

Make additional factual arguments.

## **5. Use of communicative competence**

Improvement of the relationship through persuasion, charisma, sovereignty, perseverance, integrity

### **This results in the following recommendations:**

- Develop alternatives to a possible negotiated agreement even before the negotiation begins!
- Only agree to a negotiated solution if it is better than the best alternative outside this negotiation context!
- Your own alternatives to the possible negotiation solutions determine your power position in the negotiation.
- If you openly show your power to the other side, this will be perceived as a threat. Therefore, do not threaten the other side with your better alternatives, but communicate them - if at all - as your own decision problem ("I have a problem: XY has offered me to provide the same service for € 2.000.-")!

### **Questions about BATNA (so-called Reality Testing)**

- How high do you estimate your chances of a successful realization of your interests in percent?
- What would the consequences be if you couldn't come to an agreement?
- Without agreement in the negotiation, what could you achieve with certainty outside the negotiation situation? Do you think that your ideas can be realized?

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- If you were to put yourself in the other party's shoes, how would you rate your ideas?
- Have you ever thought about what a court case costs? Outside the company (lawyer and court costs) and inside the company (transaction costs?)
- Do you think you could prevail in court on your position?
- How likely do you think it is that you will be able to enforce a winning judgment?



„It is time for an alternative!“

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### 3. Harvard Concept Checklist

The following checklist is a summary of what has been said about the Harvard concept, which guides you through the negotiation in question form.

#### 3.1 Examine views and perceptions!

- How do we promote the insight that facts are perceived subjectively?
- What is my, what is his/her view of things?
- Where do our views agree and where do they disagree?
- How can I put myself in his/her shoes and make him/her understand my situation?
- How can I avoid judging each other's perceptions?

#### 3.2 Relationship problems have priority!

- What do I do for a good relationship and trouble-free communication?
- How do we disentangle relationship and factual problems?
- How can we clean up existing relationship problems?
- How do I promote mutual trust and acceptance?
- Focus on interests, not positions!

#### 3.3 How can I avoid/question positions?

- What are my/our interests?
- What are his/her interests? (Beware of unverified assumptions!)
- What interests do we have in common?
- Where are the conflicts of interest?

#### 3.4 Develop options for mutual benefit!

- How do we create optimal conditions for creativity?
- What might a "creative" question be?
- What options can we use together to "make the pie bigger"?
- How do we avoid evaluating options too early?
- How to avoid mutual "selling" of options

#### 3.5 Find neutral criteria!

- Where can we find norms/values/legal principles/usages that can be used as a benchmark for all parties involved?
- What standards could be accepted by all stakeholders?
- What fairness criteria could we use to resolve the conflict of interest without arbitrariness?
- Where can I use legitimacy as a lance or shield?

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### 3.6. Optimize the "Best Alternative" (BATNA)!

- What is my best possible alternative if we don't come to an agreement?
- What does the other side think of my BATNA?
- What could be his/her BATNA ?
- How good is the "Affirmative Proposal" compared to my BATNA?

### 3.7 Check and close!

- Is our agreement clear and complete? Is it defined who does what and by when?
- Can our agreement be realized? Is it realistic?
- Are all parties convinced that the agreement is fair and benefits everyone?
- Have we put the essential content of the agreement in writing?

## 4. Overview of negotiation styles

Negotiation styles	Cooperative/rational		Competitive/irrational
Strategies	Adding value (additive)	distributive	Always distributive
Conviction	"There is enough for everyone, we just need to be creative".	"There is not enough for everyone, so we must share fairly".	"There is not enough for everyone, so we have to fight for the biggest piece".
Destination	Solutions for the interests of all parties	Closing of a "negotiation gap" through fair methods (application of objective criteria/neutral procedures)	Victory at the expense of the other side
Focus	WE/Interdependence/interdependence		I/interdependence/independence
Follow	Maintaining and building good relationships		Consequential damage to the environment and relationships

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## 5. Preparation

### 5.1 Checklist for the start of negotiations

Questions about the environment of the trial:

- Has a suitable, possibly neutral location been chosen?
- Has an appropriate seating arrangement been chosen?
- Are there visualization options?

(Flipchart, pinboard, metaplan cards, beamer, etc)

- Is adequate time allotted?
- Have the parties been informed in good time?
- Are interferences excluded?
- Is the physical well-being provided for?

Questions about the interior of the trial

- Are the right representatives with decision-making authority invited? Can the representatives of the other side conclude a binding agreement or do they need the consent of others first?
- What is the balance of power? Do you allow a negotiation at all? If not: how can I change the power relations before the negotiation? (See Principle 6 of the Harvard Concept).
- What is the (real) subject of the negotiation?
- What are your own negotiation goals, what are the goals of the other side?
- Am I the right negotiator? Or should someone else perhaps lead the negotiations? Sometimes there are people who find it very difficult to communicate with each other because the chemistry is not right. Here, an exchange of negotiators can work wonders.

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## 5.2 Form for the preparation of a negotiation according to the Harvard concept

Preparation of a negotiation according to the Harvard concept	
My perception of the circumstances we're negotiating	
How does the negotiator perceive the circumstances?	
Are there relationship problems? What can I do to improve the relationship?	
My interests (Wishes, needs, worries, hopes, fears)	
Interests of the negotiating partner (Beware of untested assumptions!)	
Options (possible solutions to the interests)	
Are there objective criteria for solutions (external standards/precedents etc.) Provide evidence if necessary?	
My alternatives to walk away (BATNA) if the negotiation fails. How can I improve my BATNA?	

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## 6. What causes negotiations to fail?

There are typical situations and behaviors that cause negotiations to fail. Below we list some examples. Try to avoid such negotiation situations if possible!

- One takes positions and tries to sell or impose one's own ideas on the other side.
- You mix factual and relationship problems.
- One starts from the assumption that the "cake" is limited, tries to get the bigger piece at all costs and thus avoids creative solutions.
- Attempts are made to reconcile conflicting interests through "pressure".
- One prepares insufficiently.
- You want to win at all costs.

## 7. Dealing with unfair negotiation methods.



### 7.1 The term "unfair negotiation methods"

According to our Western thinking, there are certain behaviors that we consider "unfair". In international negotiations, we then discover that other cultures have different ideas about fairness.

Haft<sup>2</sup> distinguishes between unfair and unfair methods. By unfair methods in negotiation he means "that conduct which violates written or unwritten rules observed by fair negotiators". These rules refer to the "proper" conduct in negotiations and correspond to the conviction of "all fair and just thinkers".

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## 2 Negotiation and mediation

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**Unfair** methods are used in a variety of ways to get people to do or refrain from doing things that they actually do not want to do or refrain from doing, namely through external pressure, deception or manipulation. The methods that Haft describes as unfair and dishonest are summarised below under the term "**unfair negotiation methods**".

Unfair negotiation methods are thus behaviours that violate rules of proper interaction between people or cause people to do something against their will or unconsciously. Unfair negotiation methods can be used openly (e.g. external pressure, verbal devaluation, unfavourable external negotiating conditions) or covertly (e.g. deception and manipulation).

## 7.2. Dealing with irrational arguments or influences

Negotiators try to eliminate rational thinking on the other side with irrational arguments or covert influences. Therefore, the means of choice in such cases is: **unconditional rationality**. Rational behaviour reveals the unfairness of the other side without appearing aggressive and at the same time sends the signal to the other side that you see through the game.

### 7.2.1. Dealing with irrational arguments

If the other side tries to draw you to their side with irrational arguments, it is appropriate to question the statements and offers of the other side with regard to their objective appropriateness, e.g. by using objective criteria (cf. in more detail in the explanations of the Harvard Concept Principle 5).

Such unverifiable or irrational justifications include:

- "It's too expensive."
- "We pay that in cases like this."
- "That's the most I can offer you."
- "How much do you want?"

By such statements, the competitive negotiator diverts attention from an objective determination of value (based on comparative prices, price statistics, valuation reports, value recommendations of recognised institutions, etc.).

Questions that lead on here might be something like:

- "Can you explain to me how you arrive at this price (possibly citing comparative prices, statistics, etc.)?"
- "What criteria did you use for sizing?"
- "Are there any comparative prices for this product?"

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### Case: The damaged car

A particularly successful example of the correct handling of competitive pricing is the negotiation between an insurance agent and an injured party, which we have taken from the book by Fisher, Ury, Patton, *The Harvard Concept* p. 136 ff.

*Tom's parked car had been badly damaged by a truck. Tom (T) now has to negotiate the amount of the damage with the clerk (S) of the truck driver's insurance company:*

*S: We have reviewed your case and have come to the decision that the policy covers the accident. That means you will get a compensation of 3,300 dollars.*

*T: Let's see. How did you arrive at the sum? S:*

*That's the amount we value your car at.*

*T: I understand that, but what criteria do you usually use to set that amount? Can you tell me where I can buy a comparable car for that price?*

*S: How much do you want in compensation?*

*T: Just as much as the policy provides. I found a car that matches my previous one and it's \$3,850. With sales tax and brokerage fee, that's over \$4,000.*

*S: Four thousand dollars! That's too much!*

*T: I'm not asking for \$4,000 - not even \$3,000 or \$5,000, but a fair decision. Don't you agree that it's only fair if I get enough to replace the car?*

*S: Agreed. I'm going to offer you \$3,500. That is the highest rate I can give. That is in accordance with insurance company practice.*

*T: What criteria does the company use to calculate that? S:*

*Look, \$3,500 is the most you can get. Take it or leave it.*

*T: It may be that \$3,500 is a fair price, I don't know about that. I understand your position, of course, if you are bound by the company's practices. But unless you can objectively tell me why that particular amount is justified, I think I'll be better off pursuing my case in court. However, perhaps you and I should review the matter and then speak again. Wednesday at 11:00, if you don't mind?*

*A few days later:*

*S: Nice, Mr. Griffith, I found an ad today, a '78 Ford Fiesta, for \$3,400.*

*T: I see it. How many kilometers does he have?*

*S: Seventy thousand. Why?*

*T: Mine only has 40,000 km on it. How much depreciation does that equate to in your guidelines?*

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S: *Let's see ... 150 dollars.*  
T: *Taking the \$3,400 as the base price, that now makes it \$3,550. Is there anything about a radio in the ad?*  
S: *No.*  
T: *What does that add up to, according to your guidelines?*  
S: *\$125.*  
T: *Air conditioning?*

Half an hour later Tom came out of the insurance agency with a check for \$4,012.

### 7.2.2. Dealing with manipulations(covert influences)

Manipulation is a broad field. As a term from psychology, sociology and politics, manipulation means the targeted and covert exertion of influence that aims to control experience and behaviour and is intended to remain hidden. The essence of manipulation is to cause the other side to behave in a desired way by means of a covert message.

In contrast to cases in which a negotiating partner openly uses power, manipulation is characterized by the fact that it takes place on a covert level.

Consider the following case:

You walk into a car dealer's showroom to look at various vehicles you might want to buy. The salesman shows you some cars, then quickly walks you past a sleek vehicle and tells you as you pass, "I'm not even going to show you that beautiful supercar, I'm sure it's too expensive for you."

Do you see what's happening here?

First, there is the "official" part of the message, which is, "The vehicle is too expensive." Besides that, there is also a "hidden" part, which is something like: "You are way too stingy to afford something that would impress all your friends."

The essence of manipulation is always the **hidden** message. It is the appeal that matters. In this case, the salesman would like to activate your "rebellious child<sup>3</sup>" and make you say: "I'll show him! Of course I'll buy the car!" So the reaction the salesman wants is for you to inspect and possibly buy this car out of spite. If you do this, the manipulation has succeeded.

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<sup>3</sup> Transactional analysis (TA), founded by the American psychiatrist Eric Berne (1910-1979), is a psychological model that makes human experience and behavior understandable. In the functional model of TA, different ego states are depicted in their

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*manifestations*. One *manifestation* is the child ego, in which the thinking, feeling and behaviour originating from childhood is represented.

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This kind of manipulative communication can also be called "billiard communication": One bumps a red ball to get the green one into the hole. The aim of the manipulator is to exclude the conscious decision of the other partner and at the same time to appeal to the subconscious or unconscious of the other side.

Below are examples of how to effectively deal with manipulation. As you can see, the technique is to respond to the manipulative "whispers" with a return to a rational basis.

### ***Dealing with manipulation***

<b>Manipulation</b>	<b>Example</b>	<b>Purpose</b>	<b>Reaction</b>	<b>Example</b>
Ask suggestively	"I'm sure you've been thinking about which of your demands we can eliminate, haven't you?"	Guiding the mind to give in or give way	Questioning the suggestion, clear expression of opinion	"Of course, I've given it some thought, and I've come to the conclusion that I can't eliminate any of these claims."
conceal information	— — —	masking of disadvantages	Identify or request information needs	"What has been the experience of others with this quality program?"
Alternate questions	"Do you want to buy 500 kg or only 250 kg for now?"	Pretence of freedom of choice and cooperation	Addressing the actual issue	"Neither. At the moment I have no need; I'll be in touch if the situation changes."
Appeal to the Honor /Values	"If we have a shred of honor left in us, it's pretty obvious what we're going to do."	Address basic needs or values	Questioning whether it is really about values	"What makes you think this is about our Honor goes?"
Flattery	"No one can do it like you, could you maybe take over?"	Appeal to the need for recognition/ Vanity	Accept flattery gratefully, return to matter level	"I am pleased to be recognized and will let you know by this afternoon if I can support you"

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Majority-Allegations	"Almost all Europeans can confirm this"	Quantitative upgrading of the argument	Questioning "cognition"	"Where does this knowledge come from? Is there any scientific research?"
Cite empirical claims/authorities	"The laws of the market won't allow it"	Elimination of resistance through categorical assertion/ appeal to authority	Asking for source/documents	As in majority assertions
zugzwang/ Shortage	"Offer valid today only" "There's only one room left at this price."	Appeal to economic "survival" or economic advantage	Show unimpressed, point out alternatives	"I don't want to buy in a hurry, that's often a bad buy." "I'm sure there will be another good deal coming up soon."

### 7.2.3 Handling lists

In complete contrast to the views of our Western society, for example, is the pragmatic Chinese way of thinking, which only asks whether a certain action is useful. If it is, then the useful action is right. Time and again, surprised business people who had not adjusted to this pragmatic thinking report how "unfairly" they were treated or "duped" in China.

The use of lists is not only common in China and does not raise any concerns, but is also highly regarded and has a long tradition. The negotiator who successfully negotiates with clever lists is admired. For centuries, lists have not only been valued, they have also been widely handed down and taught.

Probably the best known example of a collection of lists are the 36 stratagems (pinyin: *sanshiliu ji*) attributed to the Chinese general Tan Daoji († 436). They are common knowledge in China. Contemporary examples from the world of millennia-old Chinese list thinking are described by Harro von Senger in his book "36 Stratagems for Managers".

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Here are a few samples:

1. A delegation from Baden-Württemberg comes to China for negotiations and is first invited to witness a Japanese delegation signing a large contract with Chinese partners. The Germans feel unfairly treated and manipulated by this. "You don't do that!" they shout indignantly to each other. For the Chinese, it is nothing more than the application of stratagem No. 13 "Strike at the grass to flush out the snake" Their firm belief is that by witnessing the ratification of the treaties, the Germans will be spurred to do the same as the managers from Japan and possibly clear some hurdles in their treaty more easily.
2. Some foreign managers arrive in China over night and are immediately invited to a big reception that goes on deep into the night. Around 4:00 a.m. they sink into bed, exhausted, and are woken up again at 7:00 a.m., because the negotiations start at 9:00 a.m.. Overtired, they meet the Chinese negotiating delegation, which of course did not attend the reception.

Unfair? No, from the Chinese point of view it is nothing other than the application of stratagem No. 4 - Expect the exhausted enemy rested. And it's the Westerners' own fault if they don't counter the stratagem with one of their own! (e.g. No. 27 Mimic madness without losing balance; No. 29 Decorate arid trees with artificial flowers or No. 36 Run away is the best method).

3. Jimmy Carter visited Deng Xiaoping in 1979. Deng knew that human rights were a great concern to Carter, so he came up with it on his own, "Mr. President, I'm told that human rights are very important to you in America, is that right?" Jimmy Carter replied delightedly, "Of course, Mr. President!" - "And by human rights you mean rights such as freedom of the press, freedom of speech, freedom of assembly?" - "Exactly!" - "And freedom of movement?" - "Correct!" - "Very well, Mr. President, we too have people who value these rights very much. But we are not in a position at the moment to grant them these rights as fully as you do your citizens. But we would like to help these people. When might I send you the first 10 million of these Chinese to the United States?"

It is reported that after Deng used this stratagem #2 (besiege Wei to save Zhao), the discussion of human rights immediately faded from Carter's mind.

Of course, unlike manipulation, I cannot counter ruses by coming up with a rational argument; rather, one should not give in to this ruse but show one's surprise. First, I must recognize that it is a ruse. If I can do that, the most effective method is to respond with a ruse of my own.

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How could that be?

In the first case, the German negotiating partner could thank his Chinese partner for allowing his delegation to be present at the signing of the contract in order to draw the delegation's attention to the fact that it is necessary to study the content of a contract carefully before signing it.

In the second case, the foreign negotiator could apologise to his Chinese partners that they had not expected the negotiations to start so early and had therefore scheduled a meeting with XY or a telephone conference with the management for the morning. He therefore suggested that future negotiations should be scheduled more precisely. Of course, he should express his deepest regret in doing so.

In the third case, President Carter could have replied that this was a really great proposal that showed how seriously the Chinese leadership took the right of expression. However, he would like to have the implementation of this proposal reviewed first and send a delegation of government officials to Beijing to meet with numerous representatives of those selected to see if they were suitable for admission to the United States.

### 7.3. Dealing with attacks on the person and devaluations

Dealing with aggression is strongly related to our own mental strength and flexibility. When we notice that we are being threatened, we have two basic ways of reacting: **Fight** or **flight**, attack or flee.

These are the same reactions that were available to our ancestors when they suddenly encountered a wild animal or an enemy on one of their forays. In a matter of seconds, they had to decide whether to fight or flee.

In such situations, our body - then as now - supports any decision by releasing **adrenaline** through the adrenal glands. This substance ensured then as now that our body is prepared for the reactions flight or fight: We breathe faster and shallower so that more oxygen is available to our bodies. The heart beats faster and pumps more blood into the battle-hardened arm muscles (in preparation for combat) or race-hardened legs (to aid escape). Sweat is secreted: this cools the muscles. Thinking is restricted so that all energy is available to the muscles.

What was the optimal survival strategy for our ancestors is no longer necessarily appropriate for a negotiator in the information age. We are no longer facing snarling lions or growling hyenas, but people who do not want our lives, but perhaps our money.

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However, nature has not yet reprogrammed this difference and so the same biochemical processes still run in our bodies as they did thousands of years ago. Since people nowadays are rarely in physical danger during negotiations, the reflexive reaction "fight or flight" is wrong and inaccurate for negotiation situations. This means that if a negotiating partner behaves unfairly and I get into stress as a result, the most important thing is to prevent my "reptilian brain"<sup>4</sup> reflexive action, i.e. forcing me to react in a "fight or flight" manner. To achieve this goal requires some practice.

In the following, we explain the procedure in such constellations in **four steps**.

### **Step 1: Stop your stress and regain the overview!**

The simplest and most effective way to avoid falling victim to your own panic is to breathe deeply, and above all: breathe out! After all, in stressful situations, as already explained, you breathe shallowly. This is also understandable, because, if you have to fight or run away, all physical forces should be activated. And for that you need short, shallow breathing. If, on the other hand, I breathe deeply, then the body relaxes and I become calm again.

When a negotiator puts you under stress:

- **Breathe in deeply and, most importantly, exhale deeply, as** if you were going to sigh. Sighing is one of the body's best forms of relaxation.
- Then be **silent for** a few moments. Gather yourself again. Try to look at the other party and yourself in their negotiation situation from a position outside. "Go to the balcony!" as Ury <sup>5</sup>describes the process of dissociating. From there, look at the situation you are in.
- If the attack from the other side is so strong that you are not able to sort out your thoughts in a short time and thus move from feeling back to thinking, then take a **time-out**:

Tell your negotiating partner that you now need a few minutes break or want to go to the toilet. Leave the room no matter what the other side says and imagine you are standing on the balcony and see yourself and the other side sitting below you at the table.

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4 von Vroon and Birkenbihl, op. cit., so aptly refer to the brain stem, which, together with the midbrain and medulla oblongata, is the oldest section of the brain in terms of phylogeny. It controls original functions that can also be traced in lower vertebrates: The midbrain is a powerful reflex centre that controls the involuntary movements of the eyes, head and trunk and, for this purpose, processes optical and acoustic sensory

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impressions.

5 Ury, Brett, Goldberg, p 29ff

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If you don't want to leave the room, you can push your file off the table with a reflexive movement and then gain clarity about the situation by picking up the "flying sheets". A particularly effective and courageous method might be one that an experienced negotiator told me: In particularly difficult situations, he knocks over his water glass on the table with an erratic hand movement, which of course creates enough time for a clear head during the "drying exercises" that then follow for everyone involved. However, you cannot use these stop techniques too often, because word of such interventions is sure to get around and then all the participants are waiting to see when "he will finally throw his folder on the floor".

People who have experience with meditation techniques sometimes use a **mantra in** such situations. A mantra is a certain word that is constantly repeated, which causes the mind to calm down. One very gifted negotiator I know chants internally in such situations, "Great God we praise Thee, Lord, we praise Thy strength!" As he assured me several times, it works brilliantly.

All these techniques are called **stop techniques because** they are used to stop our stress response. In order to be able to use them in the negotiation itself, you need to **practice** them over **and over again**. You can do this, for example, by imagining certain unpleasant situations before a negotiation and then trying to react adequately in your imagination by acting out unfair behavioural methods of the other side and your - stress- relieving - reaction. In this way you will become more and more successful in behaving correctly in such situations from your point of view.

The **goal of** all these techniques is that you become master of the situation again and creatively show the behavior that fits the specific situation. In short: That you do not behave like a hominid in the steppe, but like an adapted homo sapiens of our information age.

## **Step 2: Disarm the attacker! Name the attack!**

If I have used a stop technique, then I have time to first ask myself: What actually happened here? And: How can I prevent further attacks from the other side? Or: What stratagem is the other party using and what stratagem can I use to counter it? It is important not only to recognise the attack, but also to name it to the other party, i.e. to show that you do **not want to accept** such behaviour. Send clear "I" messages and communicate what you think, feel or expect:

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For example, instead of "You've been talking about me behind my back," you can say:

*"I wish you would have talked to me about it first."*

It makes sense to do this from the balcony position already described, i.e. looking at the situation from above/outside. In this way you remove yourself from the direct negotiating position in which the attack took place and gain distance. From this position we begin to talk to the other party about our communication, hence the jargon calls this metacommunication. If you describe the situation from the outside, it sounds something like this:

*"Looking at what just happened from the outside, it seems like an unfair attack. We should talk about how this is going to go first!"*

If you remain in the original negotiating position, there is a danger that you will payback in kind, causing the exchange of words to escalate and ultimately end in shouting at each other. Inner distance, which is also expressed by the chosen language, helps a lot.

The **aim of** this message is to persuade the other side to cease **fire immediately**. The fighting should be interrupted and a ceasefire established.

### **Step 3: Understand the situation! Empathize with the other party!**

A ceasefire is not a permanent ceasefire. I can only achieve a ceasefire if I can eliminate the causes of the conflict or of my negotiating partner's aggression. Did the other side really act with intentional malice, or was the unfair behaviour perhaps only a reaction to a "foul" on their part?

Therefore, try to **empathize with the other person**. Step into their shoes. Look at the world through their eyes. Maybe you will discover that the attack of the other side was only a response to your behavior. Maybe the other person also felt attacked and went on the counterattack because of it. It also happens time and again that someone in a negotiation deals out a nasty blow for which the negotiating partner only takes revenge after some time has passed and thus at an inopportune time. The person who has now been attacked naturally no longer sees any connection with his own behaviour, which he has probably long since forgotten, and evaluates this reaction as unfounded aggression on the part of the other side. And if one is not careful, an escalation is soon underway.

We know this from sports: a fouled player is often just waiting for an opportune moment to pay the "offender" back in kind.

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The behaviour at this stage should therefore be:

**Show empathy! Show understanding!** For example, say, *"I may have done something to upset you."*

Our **goal** at this point is to find out what the reason is for the other side's unfair behavior.

#### **Step 4: Negotiate the cessation of further attacks! Continue the negotiation or stop!**

Before you re-enter the negotiation, be sure to address what you believe has just occurred. In discussing this incident, you will soon discover whether the other side's attack was a reaction to your own unfair behaviour or whether it was an action by which the other side broke the rules on its own initiative:

- If it is a **reaction to** your own unfair behaviour, there is a very simple but increasingly forgotten method: **apologise!** "Tough" negotiators believe that you should never apologize in negotiations because then you show weakness, true to the French (but in my opinion wrong) phrase: "Qui s'excuse, s'accuse!". Experience shows, however, that a sincere apology usually works wonders. Admitting mistakes shows strength, not weakness. Only weak people try to hide their mistakes to make others think they are perfect. Once you have apologized to the other party, the negotiation usually continues smoothly.
- If, on the other hand, the other side has violated the rules on **its own initiative**, then an **apology** is out of **place**. Sometimes negotiators try to provoke certain behaviors in the other side by behaving against the rules. So if the other side is the only active party in unfair behaviour, you must clearly show that you are not prepared to put up with this behaviour.

If the negotiating partner responds to your wish to "normalise" the negotiation, you are at the stage of "negotiating about negotiating". Here you can then conclude negotiation agreements that you can refer to at a later date without having to make any accusations. If we have entered into a negotiation agreement about future negotiations, then we continue the negotiation. If the other side violates this negotiation contract, we will ask them to abide by the agreement they have made.

If I cannot conclude a negotiation agreement with the other side, then this indicates that they are obviously not prepared to negotiate cooperatively. In such cases, I have to seriously consider whether I should continue the conversation at all.

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It may be better to stop, or at least pause, the negotiation at this point to allow both sides to reconsider what happened, or to send another negotiator to continue the negotiation.

**The** above techniques will bring you closer to the **goal of** this section: namely, to **eliminate future "negotiation fouls"** through a **negotiation contract**.

### **Implementation example:**

How could you deal with unfair methods if you take these four steps to heart?

Imagine you are discussing a planned joint venture with a team from your cooperation partner and suggest that the company be domiciled in the Netherlands Antilles. The negotiator on the other side replies rather brusquely that he wants nothing to do with tax evasion. You are completely surprised, because you had not thought in the least about tax evasion, but you had thought about legal tax savings....

### **Step 1:**

If you feel your reaction leaning toward fight or flight: Take a deep breath and exhale several times. Throw your folder off the table, tip the glass of water in front of you, say your mantra to yourself, go to the bathroom, in short, do what you need to give your mind dominance and take control of the situation. Use a stopping technique that suits you!

### **Step 2:**

After this pause, you could speak up. Remember that silence can be an effective weapon in negotiations and the other side may already be very rattled because you have not reacted out of reflex but have taken a "silent pause". You could then say something like this:

*"What has just occurred has rather puzzled me. I suggested to you that we could transfer the profits of our joint venture via a company that we would domicile in the Dutch Antilles. I was thinking of a tax-efficient holding construction, which of course would still have to be examined by our experts. You replied that you were not used to working with such tax evasion methods. I have to tell you that I am quite disturbed by that statement. I cannot just let that stand without us clarifying those statements. Where do you get off saying something like that?"*

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Perhaps the other side, confused by your detached response, will apologize, claim a misunderstanding, etc. It is rather unlikely that she will be able to maintain this claim after your intervention without unmasking herself as a clumsy aggressor.

### **Step 3:**

Now you may have taken the lead through your considered behavior. But before you continue hastily, it would be worthwhile in any case to ask about a possible cooperation:

*"Have I given you any cause to make these remarks? I don't recall making any suggestions at any time that could be considered tax evasion, or am I mistaken?"*

The other party's response opens up three alternatives that give you the options for **Step 4:**

1. **Alternative 1:** The other side explains to you why your own statements or other behaviour gave rise to the allegation. You could say in this case:

*"I'm sorry that I obviously misunderstood there and would like to apologize for the irritation caused to you. Thank you for helping me to resolve this issue. We can now continue our negotiation undisturbed."*

2. **Alternative 2:** The other side gives you no explanation, but apologizes for their slip, then you could proceed something like this:

*"I accept your apology. As far as I am concerned, that is the end of it. However, it is important to me that our conversation not be disrupted by similar unfortunate phrasing in the future. Do you agree with that?"*

3. **Alternative 3:** The other side does not give you an explanation and does not apologize for their slip. Then you could perhaps retort:

*"I am sorry to say that you have been unable to give me any reason for your allegation and I have obviously not given any reason for your behaviour. The least I would need is your assurance that you will not repeat this allegation. Otherwise, I will briefly suspend the hearing to discuss with my team whether we wish to continue the hearing under these conditions."*

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#### Step 4:

Depending on the response of the other side, you continue or break off the negotiation.

#### The 4-step technique (summary)

Designation of the Step by step	Behaviour/Technique	Destination	Implementation
gain an overview	Stop techniques	be on top of a situation	Take a breath, Leave room, etc.
Disarm	Name the attack	Fire setting	I can't use the refuse to accept an attack
Understanding the situation	Empathy	Search for your own share	Did I (co)authorize the attack? caused?
Peace treaty	Negotiating about negotiating	Exclusion of future negotiation fouls	Are you prepared to respond in the future to unfair behaviour ...do without?

So much for the basic scheme of how to behave in unfair behavior situations.

#### 7.4 Dealing with unpleasant negotiating conditions

Participants of negotiation seminars often ask what to do when negotiations take place under unpleasant conditions with regard to place, negotiation room or time.

Examples given are:

- Sitting tight during negotiations
- No catering during prolonged negotiations
- Negotiations until late at night without interruption (sometimes taking advantage of the battered physical situation of the negotiating partner who is suffering from jet-lag, for example)
- Let the negotiating partner look into the sun
- Sudden time pressure ("I have to leave in an hour")

If we apply the 4 steps we just discussed to this situation, such situations can be relatively easily reduced to **3 recommendations**. The previously described 3rd step is usually omitted.

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### Step 1: Gain an overview!

In order to get a grip on the aforementioned unpleasant negotiating conditions, it is important to be able to dissociate and not be intimidated.

Go to the balcony and gain an overview. From "up here" you can think about what is going on. When you are clear in your head again, address the matter.

### Step 2: Negotiate the situation!

If you have said how uncomfortable this negotiation situation makes you feel, then it makes sense to follow up by making sure that the negotiation situation improves.

Let me just show this with a few examples:

- **You have been negotiating for a long time and have not been given anything to eat. Your stomach is growling. Just say:**

*"I have the problem that I can't think when I have an empty stomach. I wonder if you could offer us something to eat, or would you prefer that we suspend the proceedings?"*

- **You get off the plane and are immediately led into a negotiation. After negotiating for a long time, your eyes almost fall shut. Say:**

*"I have not slept for 24 hours now and I am not able to follow the trial with concentration. When would it be possible to continue the trial?"*

- **You've been given a seat where you have to look at the sun all the time. Say:**

*"I have a very hard time concentrating when the sun is constantly blinding me. If the sun doesn't bother you, I'd like to switch places with you, otherwise we should consider maybe darkening the window."*

- **The other side tells you that there is very little time left for the remaining part of the negotiation, after very detailed and intensive negotiations so far. Say:**

*"Unfortunately, I forgot to ask you at the beginning how much time you had reserved for the meeting. I am sorry about that. However, I do not want such important issues to be negotiated under extreme time pressure. I therefore propose that we adjourn the meeting so that we can negotiate the remaining points properly. So that we do not come under similar time pressure next time, we should set the time requirement right now. Would you have time for about 4 hours on Jan. 15 at 10:00 a.m. or would you be comfortable with another date?"*

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If you politely address the uncomfortable situation and show the other side that you are not willing to put up with it, the problem will usually resolve quickly. Otherwise, move on to the

### Step 3: Continue the negotiation or stop!

If your partner tries to continue the negotiation without resolving the disruption, you need to become energetic because otherwise you will not be able to negotiate in a focused manner. Also, you might be seen as a person without muscles by the other participants in the negotiation. If your partner is not willing to stop the disruption, you should consider stopping the negotiation.

### Behaviour in unpleasant negotiating conditions (summary)

Designation of the Step by step	Behaviour/Technique	Destination	Example
gain an overview	Go to the balcony	Cause of the fault recognize	Stop techniques
Disarm	Address fault	Correct malfunction	I have a problem...
Demolition	threaten with abort	Undisturbed negotiation save face	If you don't turn it off. I'm going to abort...

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## 7.5 Dealing with complexity

In 1.1. we gave an example of how a buyer succeeded in confusing the antique dealer to his disadvantage by playing with complexity.

In the following, we will consider how to avoid such attempts at confusion.

### Organize complexity!

When faced with a complex negotiation issue, you need to organize the complexity to avoid overreaching:

*" If I understand you correctly, your concern with this desk is first the price, second the payment terms, third the restoration, and fourth the delivery.*

*Right? OK, if you agree, let's start with the price and deal with the other points afterwards. Agreed? Great. Then why don't you make me an offer?"*

You now work through the negotiation step by step and do not mix "apples and oranges". The negotiation becomes transparent. You can then **set a price for** each concession **and deduct it from the purchase price** or increase **the purchase price accordingly to arrive at** a correct result.

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## Purchase of a car

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# PURCHASE OF A CAR

## Instructions for the Car Dealer named Scrap

The Peugeot has been standing on your yard for a long time. You really want to sell it, so you would be content if the sale would let you achieve a low profit. You bought the car for € 7.000,00 and you would even agree on selling it for a minimum price of € 8.000,00. You believe that the actual value of the car could be € 10.000,00, as the mileage of 18.500 km is very low and the car has a stereo system, antilock brake system, airbag at the driver's as well as at the passenger's seat, power steering system and other features. Another interested buyer offered € 8.000,00, but can only pay in instalments. If you could make more than € 11.000,00 with the car, you could be very proud of you.

The car is five years old and was regularly parked in a garage. Unfortunately it uses petrol fuel, which means that it needs a lot more fuel than a car using diesel fuel. But this disadvantage will have to be accepted by the purchaser. As the car has been standing in the yard for quite a while, it has no valid sticker from the Technical Inspection Association and the exhaust inspection of the car also has to be renewed.

The biggest drawback of the car is the colour – metallic purple - , as nobody likes it at all. The car also had a rear-end collision accident, but without major damage. The damage has been repaired and does not justify a lowering of the price. A small bump is the only thing remaining from the collision.

In order to have enough space for bargaining, you will start the negotiation demanding for € 12.500,00.

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## Purchase of a car – general facts

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# PURCHASE OF A CAR

## General facts

Car Dealer Mr. Scrap has a five year old Peugeot on his yard, colour: Metallic purple. In the car there is a sign saying "For sale, price negotiable". The car has a lot of extra features, for example a good stereo system, antilock breaking system, airbag at the driver's as well as the passenger's seat and a power steering system. According to a list put up by a motoring organization, the car is worth € 7.500,00. The motoring organization assumes an annual mileage of 15.000 km (this would mean 75.000 km in total), but this car only has a mileage of 18.500 km. But for the reason that the car has been standing in the yard of Mr. Scrap for quite a while, it has no valid sticker from the Technical Inspection Association anymore and the exhaust inspection of the car also has to be renewed.

Today, Mr. Brave enters the yard of the car dealer. He is interested in the car. Mr. Scrap and Mr. Brave will negotiate concerning the sale of the car.

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## Purchase of a car

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# PURCHASE OF A CAR

## Instructions for the purchaser named Brave

Imagine you are very interested in the Peugeot on the yard of Mr. Scrap. You like French cars a lot, but the colour – metallic purple – you do not like very much.

As you think economically, you are impressed by the low mileage of the car. You are a secondary school teacher and your income is not very high. Therefore, you have to buy a reliable car which will not need a lot of maintenance. You are a fan of the idols of rock like Little Richard and Joe Cocker. Therefore, you like to listen to music very loudly while driving, as long as you are not driving close to the school you are working at. But a stereo system in the car is really very important to you. A further disadvantage of the car is the fact that it uses petrol. You were looking for a car using diesel fuel, because you were hoping to be able to save some more money as diesel fuel is a bit less expensive.

You estimate that the price for the car might be € 9.000,00. As you discover that the car has a larger bump, you have to find out if the bump results from a major accident. If this would be the case, it could lower the price significantly. If you could buy the car for € 7.000,00, it would be a great deal. The absolute maximum you are willing to pay is € 10.000,00. You are not going to spend more than that.

In order to have more space within the bargain, you start with an offer of € 6.000,00.

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## Alternative Dispute Resolution (ADR) Module Test

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## Alternative Dispute Resolution (ADR) Module Test

1. The Purpose of Directive 2008/52/EC is to regulate:

- A. Cross-border civil disputes.
- B. Online Dispute Resolution (ODR).
- C. Certain aspects of mediation in civil and commercial matters.
- D. Alternative Dispute Resolution (ADR).

2. Directive 2008/52/EC was enacted with the goal of promoting the use of mediation. Did the Directive prevent Member State legislatures from imposing the use of mediation, being mediation a voluntary process?

- A. Yes.
- B. No.
- C. It depends on the Member State.
- D. Only in certain cases.

3. One of the objectives of Directive 2013/11/EU is to:

- A. Promote mediation in Business-to-Consumer (B2C) disputes.
- B. Regulate ODR.
- C. Promote high-quality consumer ADR.
- D. Regulate ADR in Business-to-Business (B2B) disputes.

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4. Which of the following is not true:

- A. Directive 2013/11/EU ensures that EU consumers can submit their contractual dispute with an EU trader over a product or service to an alternative dispute resolution (ADR) entity.
- B. Directive 2013/11/EU sets out binding quality requirements for ADR entities.
- C. Directive 2013/11/EU obliges traders to inform consumers about ADR by including on their websites or their contract (if are affiliated to an ADR entity) the contact information of the ADR entities.
- D. Directive 2013/11/EU designates national competent authorities that create and keep national lists of ADR entities and monitor that such entities comply with the quality requirements set out in Chapter II.

5. The ODR Platform of the European Union facilitates:

- A. Consumer-to-Consumer (C2C) domestic and cross-border disputes.
- B. B2C domestic and cross-border contractual disputes in relation to goods and/or services purchased online.
- C. Business-to-Business (B2B) disputes between EU traders.
- D. B2B and Business-to-Consumer (B2C) domestic and cross-border EU disputes.

## Mediation Process Module

### Test

1. In Cross-border commercial mediations, pre-mediation meetings are:

- A. Inappropriate when two neutrals are appointed for the mediation.
- B. Important to assess the different cultural perspectives of the parties on the issue in dispute.
- C. They are crucial to the final decision that the mediator will have to make concerning the dispute.
- D. Discouraged in cross-cultural disputes.

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2. The goal of the opening stage is to:
  - A. Assist the parties in exchanging information.
  - B. Prevent emotional communication between the parties.
  - C. Set a tone of trust.
  - D. Help the parties identify their underlying interests.
  
3. In cross-border mediations, the scope and extent of confidentiality protection:
  - A. Does not vary from country to country.
  - B. Does not represent an issue since international rules consider any information shared in mediation confidential and inadmissible in court or a tribunal.
  - C. Can vary from country to country.
  - D. Does not have any limitations.
  
4. In cross-border commercial mediations, could the parties react differently to time?
  - A. No.
  - B. Yes, especially when they come from different cultures.
  - C. Only when they negotiate.
  - D. Yes, and only when they are under a time constraint.
  
5. In cross-border mediations, a mediator should give particular attention to:
  - A. Providing legal advice to the parties.
  - B. Drafting an agreement that reflects the mediator position on the dispute.
  - C. Advising the parties to not share the agreement with their legal counsel.
  - D. How a mediation settlement agreement will be enforced outside the jurisdiction where the mediation took place.

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## Online Dispute Resolution (ODR) Module

### Test

1. The first ODR project was developed in the United States (US) in the mid-90s with the name:
  - A. ODR Magistrate.
  - B. Online Magistrate.
  - C. Virtual Magistrate.
  - D. None of the above.
  
2. The UNCITRAL Working Group III Technical Notes on Online Dispute Resolution defines ODR as:
  - A. The use of IT and the Internet to help resolve disputes.
  - B. A mechanism for resolving disputes through the use of electronic communications and other information and communication technology.
  - C. A method of Alternative Dispute Resolution (ADR) for the judicial system and the courts.
  - D. A mechanism for resolving disputes.
  
3. E-negotiation is a process in which the negotiation is exclusively performed:
  - A. By the parties.
  - B. By a platform with the supervision of a third neutral party.
  - C. By a “double blind” technology.
  - D. By a platform through autonomous agents.
  
4. Online arbitration awards seem to be admissible under:
  - A. The 1958 NY Convention.
  - B. The 2020 Singapore Convention.
  - C. The 1920 Geneva Convention.
  - D. None of the above.
  
5. When preparing for an online mediation, a mediator should:
  - A. Sit faraway from the computer screen.
  - B. Seek natural light when possible.
  - C. Use an artificial lamp pointed directly at his/her face.
  - D. Sit in front of a window.

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## Questions for the code of conduct and mediation styles test

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### Questions for the code of conduct and mediation styles test – correct answer is underlined

1. Which of these statements about the European Code of Conduct for Mediators is FALSE:
  - a) the Code is intended to be applicable to all kinds of mediation in civil and commercial matters
  - b) according to the Code, the mediator should not conduct individual mediation meetings with the parties separately
  - c) the Code stresses that mediators have a continuing obligation to disclose any circumstances that may lead to conflict of interests or bias
  - d) according to the Code, it is fair for the mediator to suggest ending a mediation when the agreement seems unenforceable or illegal and when the mediator assesses that agreement is unlikely
2. Which of these statements about the European Code of Conduct for Mediation Providers is FALSE:
  - a) the Code is addressed especially at mediation centres, institutes and other organizations providing mediation services
  - b) the Code applies only to European court related processes
  - c) the Code refers to i.e. quality and competence of the service, as well as transparency and communication
  - d) the Code refers to i.e. conflict of interests, as well as complaints and disciplinary procedures
3. The mediator is highly result-oriented and involved in the merits of the dispute in:
  - a) facilitative style
  - b) evaluative style
  - c) transformative style
  - d) narrative style

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4. The mediator is more focused on procedure and “orchestrating” interest-based negotiations in:
  - a) facilitative style
  - b) evaluative style
  - c) transformative style
  - d) narrative style
  
5. According to the transformative mediation model, the goal of mediation is achieved through:
  - a) empowering the mediator to provide parties with insights on the moral aspects of their dispute
  - b) empowerment that each of the parties gains and recognition they are willing to offer to each other in the process
  - c) recognizing the role of emotions and personal issues in dispute by the parties and feeling empowered to abide by them
  - d) transformation of each of the parties experiences when their rights and interests are addressed properly and impartially

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## Culture and Communication Module - Multiple choice questions

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### Culture and Communication Module - Multiple choice questions

1. Recall our exploration of culture and select the answer which best describes your understanding of *culture*:
  - a) Includes our identities and excludes our values
  - b) Remains fixed over time
  - c) Is learned through our lived environment
  - d) Is the best measure to define groups of people
  
2. Jane was raised in an individualist society. Which of the following statements was most likely made by Jane:
  - a) Even though the teacher told us the wrong answer, I could never have corrected them in front of the class!
  - b) My parents and grandparents always supported me. It is a joy to now be in a position to give back to them as a professional with a family of my own.
  - c) When we have difficult decisions to make, our community is there to guide us.
  - d) I believe that everyone is equal and deserves equal treatment.
  
3. John was on top of the world -- he'd gotten his 2<sup>nd</sup> promotion of the year, was driving a new sportscar and had a devoted, loving wife.
  - a) John comes from a feminine culture.
  - b) It is important to John that he is a good provider for his family.
  - c) John probably encourages his daughter to be the best football player on her team.
  - d) John supports his government to give aid to poor countries.

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4. In high context cultures:
- a) Messaging in explicit
  - b) Communication is clear and direct
  - c) People understand information without being told
  - d) Resolution is sought when conflict arises
5. Mediators employ many skills to support parties in conflict. Select the answer that best describes key attributes of an effective mediator.
- a) Listens on multiple levels to deepen parties understanding of their needs.
  - b) Offers parties their authentic selves and true presence throughout the process
  - c) Builds rapport using honesty, empathy, autonomy and reflection
  - d) All of the above

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## Self-Assessment Test

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Question 1) Which of the following concepts is **not** part of the PIN Model of Conflict?

- a. Interests
- b. Positions
- c. Needs
- d. People (right answer)

Question 2) Which statement is **not** meant by the onion model of conflict?

- a) It is based upon the idea that the layers of a conflict are much like that of an onion
- b) Usually, there are many levels to be considered, but only those on the surface are visible
- c) Working on a conflict is like peeling an onion - tears often flow (right answer)
- d) It is just one more example of several conflict layer models that help the mediator to examine the parties positions, interests, and needs.

Question 3) What types of questions are suitable for conflict analysis?

- a. Open questions
- b. Closed Questions
- c. Hypothetical questions
- d. All of the above, it depends on the right timing and context (right answer)

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Question 4) What is meant by the idea of psychological distance?

- a) It describes the phenomenon that with greater distance conflicts cannot be resolved.
- b) It is a psychological construct that includes subcategories like spatial, temporal, and social distance (right answer)
- c) It basically means - Time is a great healer
- d) Things are perceived more concrete in the distance

Question 5) What is meant by the term "Killing the Play"

- a) To take away the participants' pleasure in playing with a conflict situation
- b) It is an approach to learn from the classic tragedies for everyday conflict (right answer)
- c) It is a doctrine that excludes playful elements from conflict resolution
- d) It describes the phenomenon that conflicts often arise in the game like situations

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## Self-assessment test

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### Self-assessment test

Answer marked in **yellow** is correct.

Pick only one option as indicated in the question.

Q1 According to the Harvard Concept, what creates trust in a negotiation? Pick the correct option.

- Treating facts and relationships together
- **Predictability**
- Undisclosed information
- Pushing one's own agenda

Q2 Which of the following hinders or prevents creative development of ideas during a negotiation?

- Looking for the most fitting rather than the 'right' solution
- Not limiting the 'size of the pie' i.e. the value of the negotiation subject
- **Snap judgements to reach the best solution quickly**
- Assessment of solutions only when ideas stop flowing

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Q3 Which of the following is correct about BATNA?

- Once decided, a BATNA should not be changed.
- Areas outside the focus of the negotiation can be touched upon for additional benefit.
- Specialist knowledge or technical competence can make a BATNA more difficult to reach.
- Several alternatives should be laid out at the same time in front of the other side/party.

Q4 How can one find neutral criteria for negotiation? Pick the wrong answer.

- Finding a benchmark for all parties
- Common standards to be used by all parties
- Using legitimacy as a shield appropriately
- Single-mindedly pursuing your claim

Q5 What causes negotiations to fail? Pick the wrong answer.

- Mixing facts with relationships
- Wanting to win at all costs
- Remaining non-assertive
- Insufficient preparation

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## Test Module 6 – Mediation Stages

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#### Question 1/5

In Cross-border commercial mediations, pre-mediation meetings are:

- ☐ Inappropriate when two neutrals are appointed for the mediation
- ☐ Important to assess the different cultural perspectives of the parties on the issue in dispute
- ☐ They are crucial to the final decision that the mediator will have to make concerning the dispute
- ☐ Discouraged in cross-cultural disputes

#### Question 2/5

The goal of the opening stage is to:

- ☐ Assist the parties in exchanging information
- ☐ Prevent emotional communication between the parties
- ☐ Set a tone of trust
- ☐ Help the parties identify their underlying interests

#### Question 3/5

In cross-border mediations, the scope and extent of confidentiality protection:

- ☐ Does not vary from country to country
- ☐ Does not represent an issue since international rules consider any information shared in mediation confidential and inadmissible in court or a tribunal
- ☐ Can vary from country to country
- ☐ Does not have any limitations

#### Question 4/5

In cross-border commercial mediations, could the parties react differently to time?

- ☐ No
- ☐ Yes, especially when they come from different cultures
- ☐ Only when they negotiate
- ☐ Yes, and only when they are under a time constraint

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#### Question 5/5

In cross-border mediations, a mediator should give particular attention to:

- ☐ Providing legal advice to the parties
- ☐ Drafting an agreement that reflects the mediator position on the dispute.
- ☐ Advising the parties to not share the agreement with their legal counsel
- ☐ How a mediation settlement agreement will be enforced outside the jurisdiction where the mediation took place

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## Questions for the mediation techniques test

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### Questions for the mediation techniques test – correct answer is underlined

1. „Well-meaning clashes”:

- a) are situations when people compete with others in order to achieve their own best interest
- b) are misunderstandings that occur when people are trying to convince others to adopt their own perspective
- c) are situations when people try to be friendly towards another person but find it difficult to like them
- d) are misunderstandings that occur when people are acting properly and respectfully according to their own norms, which turn out to be different than those of their communication partners

2. The concept of positive connotation means:

- a) trying to connect people by looking for personal similarities
- b) adding a positive comment to each accusation that the parties formulate
- c) interpreting difficult behaviours through positive motives
- d) generalizing all the positive things that the parties say about each other

3. People who expect a brief opening of the mediation process and move on swiftly to the merits of the case are likely to be:

- a) task oriented
- b) relationship oriented
- c) exerting pressure
- d) high-context communicators

4. People who expect to establish rapport through informal meetings and personal talks are likely to be:

- a) task oriented
- b) relationship oriented
- c) reluctant to the mediation process
- d) low-context communicators

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5. The value-development square model (by Schulz von Thun) is composed of two dimensions:

- a) negative and positive tensions
- b) the perspective of person A and the perspective of person B
- c) mutual allegations and underlying positive values
- d) mutual allegations and responses to these allegations

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## Questions for the co-mediation test

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### Questions for the co-mediation test – correct answer is underlined

1. Natural stages in cooperation development – in groups or professional dyads – are respectively:

- a) forming / storming / norming / performing
- b) norming/ storming/ forming/ performing
- c) forming/ performing/ storming/ norming
- d) forming/ norming/ storming/ performing

2. To develop a creative cooperation the mediators' dyad needs to successfully go through the key stage of:

- a) storming
- b) norming
- c) performing
- d) forming

3. The „Big Five” personality traits are:

- a) neuroticism, conscientiousness, agreeableness, extraversion, openness to experience
- b) neuroticism, extraversion, intelligence, conscientiousness, agreeableness
- c) agreeableness, consistency, openness to experience, intelligence, neuroticism
- d) consistency, agreeableness, fairness, neuroticism, openness to experience

4. Neuroticism refers to:

- a) limited emotional stability
- b) limited ability to adapt to new and unexpected situations
- c) limited ability to set up the goals and accomplish them
- d) limited cognitive and behavioral consistency

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5. Choose the correct sentence:

- a) intuitive collaboration is the simplest and most effective way to divide roles and tasks between mediators
- b) the division of roles in co-mediation according to the stages of mediation means that mediators work with the parties individually and exchange information from separate meetings
- c) the division of roles according to the tasks means that mediators share specific areas of activity during the sessions or outside of them
- d) the division of roles between mediators according to topics means that each of mediators focus on the topic according to their expertise

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## Test Module 9 – Online Dispute Resolution

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#### Question 1/5

The first ODR project was developed in the United States (US) in the mid-90s with the name:

- ☐ ODR Magistrate
- ☐ Online Magistrate
- ☐ Virtual Magistrate
- ☐ None of the above

#### Question 2/5

The UNCITRAL Working Group III Technical Notes on Online Dispute Resolution defines ODR as:

- ☐ The use of IT and the Internet to help resolve disputes
- ☐ A mechanism for resolving disputes through the use of electronic communications and other information and communication technology
- ☐ A method of Alternative Dispute Resolution (ADR) for the judicial system and the courts
- ☐ A mechanism for resolving disputes

#### Question 3/5

E-negotiation is a process in which the negotiation is exclusively performed:

- ☐ By the parties
- ☐ By a platform with the supervision of a third neutral party
- ☐ By a “double blind” technology
- ☐ By a platform through autonomous agents

#### Question 4/5

Online arbitration awards seem to be admissible under:

- ☐ The 1958 NY Convention
- ☐ The 2020 Singapore Convention
- ☐ The 1920 Geneva Convention
- ☐ None of the above

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#### Question 5/5

When preparing for an online mediation, a mediator should:

- ☐ Sit far away from the computer screen
- ☐ Seek natural light when possible
- ☐ Use an artificial lamp pointed directly at his/her face
- ☐ Sit in front of a window

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