



Negotiation for Lawyers: Practice and Theory

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COURSE DESCRIPTION

As human beings, we all negotiate our way through life. As lawyers, we negotiate as a way of life. Acting as individuals on our own behalves, or representing our clients, we use negotiation as our primary method of getting what we need. Whether we want to solve a dispute for a client, or assist a corporation in constructing a profitable transaction, we often find that we are unable to achieve our goals on our own. We must rely on our ability to affect other parties and persuade them to aid us, or not to hinder us. Most of our decisions are not made on our own, in a vacuum, but are the result of conferring with others to seek outcomes.

Obviously, negotiation skills are something every human being needs to have in his personal toolbox. As lawyers, we need to upgrade these skills into professional expertise. Attorneys, businesspeople, diplomats, and community leaders regularly engage in negotiations in which the price of failure can be extreme or even catastrophic; such professionals need special abilities allowing them to build relationships and form partnerships even under the most difficult circumstances.

This course is an introductory skill-building course in negotiation. Its participants will learn to improve their own negotiation skills, helping them to act consciously and skillfully in tough situations. Negotiation theories, which draw from psychology, mathematics, legal studies, business administration and more, will be translated in this course into practicalities. We will learn and practice techniques designed to help us negotiate successfully despite the other party's lack of skill, trust or good intentions, and to help ourselves manage situations in which we ourselves are parties to conflict in a beneficial manner.

LEARNING FORMAT

The learning format includes interactive lectures and simulation-games, in which students will personally experience negotiations and conflicts in a variety of settings. Some of these settings draw on real-life cases, while others were designed by leading scholars and practitioners in the conflict resolution field to promote maximum skill-building.

PERFORMANCE REQUIREMENTS AND GRADING

This is a hands-on course; most of the learning is experienced in the classroom and cannot be attained only through reading. Therefore, **full attendance in class is required**; useful and productive participation is expected, and both will contribute to the final grade. There is also a final quiz in this course, though, which relies on the readings assigned, the video-clips analyzed in class and the debriefings of class exercises. Passing the quiz and fulfilling the participation requirement will award the participant a passing grade.

Grade breakdown:

Attendance and informed and productive participation in all classes and exercises	50%
Final quiz	50%

READING MATERIAL

A textbook will be provided. The following is a list of sources that most of the material was taken from, for your convenience. The purpose of the required reading is twofold: First, to compliment and flesh out the classroom experience. The second purpose is to familiarize you with the leading literature and writers in the field and expose you to different names, views and approaches.

- ROGER FISHER, WILLIAM URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (2nd ed., NY: Penguin 1991)
- DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ (Bantam Books 1996).
- JOHN LANDE, LAWYERING WITH PLANNED EARLY NEGOTIATION: HOW YOU CAN GET GOOD RESULTS FOR CLIENTS AND MAKE MONEY (American Bar Association 2011).
- DEAN G. PRUITT, SUNG HEE KIM & JEFFREY Z. RUBIN, SOCIAL CONFLICT: ESCALATION, STALEMATE, AND SETTLEMENT (3rd ed. McGraw-Hill 2003).
- LEIGH THOMPSON, THE MIND AND HEART OF THE NEGOTIATOR (5th ed., NJ: Prentice Hall 2011).

CLASSES PLAN

Please note that there may be some alterations according to instructor's discretion

Unit # 1 – Monday, 12 Oct. 2015, 13:30-15:00

Topics Covered:

- Course Intro
- Levels of interaction: from interpersonal to international
- Negotiation Definition and Basics

Simulation-Game: Silence of the Dogs

Reading Material:

- Negotiation: The Big Picture (Thompson 1-12)
-

Unit # 2 – Monday, 12 Oct. 2015, 16:40-18:10

Topics Covered:

- Personal negotiation style
- The Prisoners' Dilemma and other real-life social dilemmas

Simulation-Games: "Pasta Wars"

Reading Material:

- Strategic Thinking (Pruitt, Rubin Kim 27-46)
 - Optional: Social Dilemmas and Other Noncooperative Games (Thompson 213-227)
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Unit # 3 - Tuesday, 13 Oct. 2015, 8:00-9:30

Topics Covered:

- Strategies for Dealing with conflict
- Integrative and Distributive Elements of Negotiation

Simulation-Game: "Ugli Orange"

Reading Material:

- Integrative Negotiation (Thompson 55-67. Other pages of chapter: optional)
 - Optional: Emotional Hijacking (Goleman, Chapter 2)
-

Unit # 4 - Tuesday, 13 Oct. 2015, 16:40-18:10

Topics Covered:

- 10 Elements Model of Negotiation

Simulation-Game: "Wagon Wheels"

Reading Material:

- Positions & Interests (Fisher, Ury & Patton 3-7, 40-55)
- Role instructions for 'MultiPlast and Gordi' simulation game.

Unit # 5 - Wednesday, 14 Oct. 2015, 11:10-12:40

Topics Covered:

- 10 Elements Model of Negotiation – cont'd
- Communication Tools in Negotiation and Dispute Resolution

Simulation-Game: “Sliding Doors”

Reading Material:

- Don't Reject – Reframe (Ury 76-104)
-

Unit # 6

Topics Covered:

- Communication Tools in Negotiation and Dispute Resolution (continued)
 - **Final Quiz:**
 - Option A: 60 minutes; 10 questions: 5 multiple choice questions, 5 short answer questions; Based on the readings and class discussions.
 - Option B: *Simulation-Game:* “MultiPlast and Gordi” – active participation.
 - Course summary
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Definitions of Negotiation

A decision making process by which two or more people agree how to allocate scarce resources.

(Leigh Thompson, "The Mind and Heart of the Negotiator")

Back and forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed.

(Ury & Fisher, "Getting to Yes")

How about:

Any attempt to affect, convince or persuade.

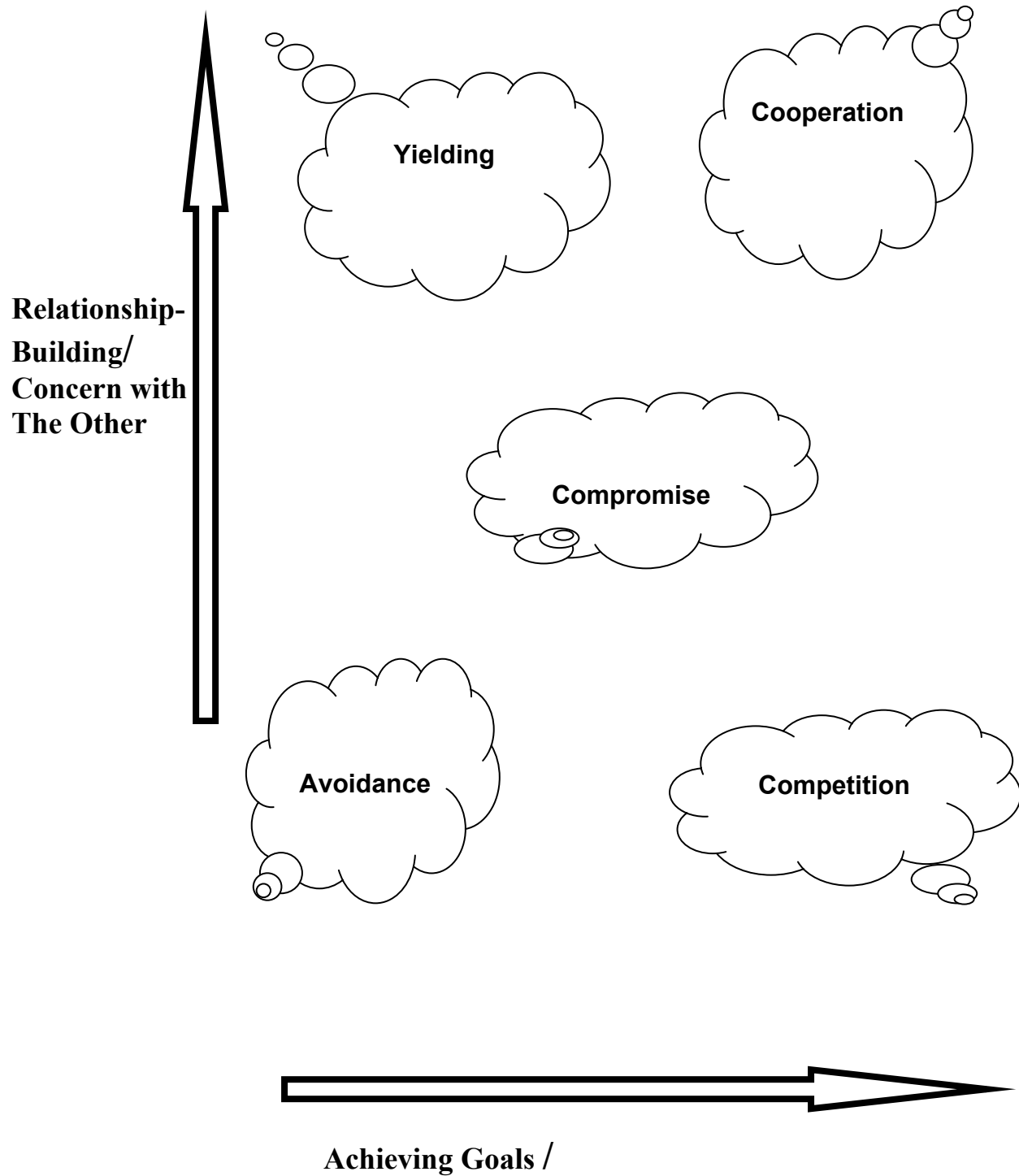
Instinctive Negotiation

Negotiation is one of the most basic forms of human interaction. Approaching it, we often foresee or expect tension, conflict or opposition. We all deal with such apprehensions in different ways, consciously and subconsciously. We each have our own instinctive way of approaching negotiation, and this has dramatic effects – for better or for worse – on the process. Let’s try to get to know that very basic point from which we each begin our own negotiations. Familiarity with your own instinctive starting point can help you avoid pitfalls and adverse effects of instinctive negotiating by both parties.

Try to evaluate the following sentences, according to the degree of your identification with its content. The scale runs from 1 (“I don’t identify with this sentence at all”) to 10 (“That’s exactly how I feel!”). Remember – evaluate the sentences, don’t rate them against each other; you can give the same number-evaluation to as many sentences as you like.

1.	I don’t like to confront others.	1.....2.....3.....4.....5.....6.....7.....8.....9.....10
2.	While negotiating - I focus only on my own views.	1.....2.....3.....4.....5.....6.....7.....8.....9.....10
3.	It’s important to gain more than the other party in a negotiation	1.....2.....3.....4.....5.....6.....7.....8.....9.....10
4.	I think you should try and preserve your ongoing relationship with the other party.	1.....2.....3.....4.....5.....6.....7.....8.....9.....10
5.	I don’t want the other side thinking I’m a sucker.	1.....2.....3.....4.....5.....6.....7.....8.....9.....10
6.	I’m willing to make concessions in order to save my relationship with another party.	1.....2.....3.....4.....5.....6.....7.....8.....9.....10
7.	I want the other party to feel satisfied with the negotiation’s outcome.	1.....2.....3.....4.....5.....6.....7.....8.....9.....10
8.	I try to negotiate without giving in on anything.	1.....2.....3.....4.....5.....6.....7.....8.....9.....10
9.	Successful negotiations are judged only by the outcome.	1.....2.....3.....4.....5.....6.....7.....8.....9.....10
10.	I sometimes feel that I make concessions in negotiations, while the other party makes none.	1.....2.....3.....4.....5.....6.....7.....8.....9.....10

Strategies for Dealing with Conflict



Concern with Self

Negotiation: The 10 Elements Model

Negotiation is a complex and dynamic process, and it's difficult to break it down into stages. On the other hand, any negotiation, whatever the issue discussed or what the value on the table is, can be studied by making observations regarding ten elements. Awareness of what is going on with these ten factors - while preparing for a negotiation or while actually at the table - will help us avoid pitfalls, improve communication and reach better agreements.

1.	Parties	<i>Who is involved in the negotiation? Who should be involved? What do we know about them?</i>
2.	Relationship	<i>Past, Present and Future</i>
3.	Issues	<i>What are the negotiated issues? What has each party come to discuss? Are all the issues on the table?</i>
4.	Perceptions	<i>How does each side perceive the facts? How do they perceive themselves, their power, and the other party?</i>
5.	Positions & Interests	<i>What is being demanded by each party? What does each party actually want or need, and why?</i>
6.	Options	<i>The spectrum of possible agreements between the parties.</i>
7.	Alternatives	<i>Backup plans – what can each side do, away from the negotiating table, if agreement is not reached?</i>
8.	Standards	<i>Objective criteria to aid in evaluating options.</i>
9.	Resolution	<i>The goal and main product of the negotiation.</i>
10.	Communication	<i>How is information transferred? Are both parties speaking the same languages, on all levels? How can we improve understanding?</i>

Communication Skills in Negotiation

1. Active Listening

Goal: Transmitting a message to the speaker: “Feel comfortable – I’m not only hearing you, I understand you as well”. This creates an atmosphere of trust, enabling open communication.

General: While considering how to express attentiveness to any given speaker in any given situation, give the following a thought: What is the relationship between you and the speaker? Are you listening to someone with whom you are intimate? A client? A stranger? These will affect such things as body language, positioning, physical contact, eye contact etc. Consider the surroundings. Take into consideration outside noise, proximity of other people etc.. Are you listening alone? If you’re in a group – are you in a facilitative position, or one of the group?

Body Language:

What is your body indicating to the speaker? Are you slouched back, away from him? Are your feet jiggling with inner impatience? Are your hands folded defensively across your chest, or masking your face?

What is your body trying to tell you? If you’re on the edge of your seat – do you want to get away from this conversation? If you find yourself dealing with amplified itches and scratches – do you really want to focus on someone else?

Attentiveness:

Are you totally focused on the speaker, or is your attention wandering? Are you playing with your keys or making sure your cell phone is on? Does an attractive passerby turn your head?

Eye Contact:

Do it for real – try to *transmit* empathy and attentiveness. Don't go glassy eyed! Keep in mind the possibility that excess eye contact makes some people uncomfortable.

Mirroring:

Let your body adjust itself to the speaker's. If someone leans toward you, don't back away - tilt slightly forward. If some one speaks with his or her hands, let your own hands answer.

Words and Gestures:

Nodding, smiling, affirmative noises or understanding phrases (like mmmhmm) transmit attentiveness.

Above all – remember!!!

The most important thing in active listening is sincerity. If it is done in a phony way or without real desire, it will sound accordingly and have the opposite effect. You have to **want** to listen actively. You have to be **interested** in what is being said and what the speaker is trying to convey. If it doesn't interest you - don't bother.

Communication Skills in Negotiation

2. Reflecting

- Repeat or summarize the speaker's words or main points in order to make sure you understood him correctly.
- Reflect emotional details as well as factual details.
- Use key words or phrases the speaker himself used.
- Try to appear neutral towards the speaker's points at this time. Don't argue or try to win points now; transmit attentiveness and ensure you understood him.
- Stress the speaker's ownership of the story by using phrases referring to him as its originator (e.g, "...*you describe* how you went for a drink of water, and then *you say* you met your boss in the hall. *You say* this meeting disturbed you, as you felt he attacked you and left you feeling insecure").
- Don't declare facts as true ("I understand that he cheated you on this deal"), rather - phrase them as what the speaker said, or felt, or experienced ("I understand you feel cheated", or "So you feel he cheated you").
- Reflecting, repeating or verbalizing the speaker's *emotions* (e.g. "I can see that my comment annoyed you") conveys true attentiveness and interest. In some settings, one can take that to the point of validating (e.g. "I can see where that would be frustrating to you"). In other situations you might not want to take it that far. At any rate, when reflecting emotions the speaker did not actually name himself, be tentative: Don't *tell* the speaker what his emotions are – *ask* him, by leaving a question mark hanging in the air.
- Always end with a question: "Have I understood you correctly?"

Communication Skills in Negotiation

3. Reframing Exercise

Reframe the following statements:

At home:

“You are so fussy about what the kids eat. Would it kill them to eat fast food occasionally?”

“Does it ever enter your mind that I could use a little help with cleaning the house?”

“Kids! For the millionth time – no playing basketball in the house! You’re driving me crazy!”

On the job:

“I will *not* work with you again! Last time we had a deal, you broke the contract, you cheater!”

“My God – your desk is a mess; how can you get any work done that way?”

“I see you’re going home early again today...”

Communication Skills in Negotiation

4. "I – Statements" Exercise

In the below situations, try and imagine what you might instinctively say to the other party. Next, try and phrase an I-message you think might influence the other party.

Remember: Consider beginning sentences with self references such as “I feel/need/think...” – and do not use the word “you” in the next 5 words!

Situation # 1:

A supplier delivered equipment you ordered from him a week late, and you couldn't fill your customers' orders. As a result, a regular client of yours went ahead and bought what he needed from your competitors. You call the supplier and:

Regular reaction:

I-statement:

Situation # 2

Lately, your business partner has started to make a habit of always arriving at the office about an hour after you yourself do – and leaving at least an hour earlier. Today, when he showed up at 10:00, you went into his office and:

Regular reaction:

I-statement

Situation # 3

You are sitting in a tea-garden, enjoying an afternoon tea with a friend whom you have not seen in ages. You are trying to enjoy a conversation, but the three people sitting around the table next to you are making a lot of noise: telling jokes, making comments about passers-by – all at full volume. You...:

Regular statement:

I-statement

Situation # 4

You are trying to negotiate the price of a new laptop computer with a salesman, but every time you try and make a point or ask a question, he interrupts you and goes back to whatever it was he was talking about. You say:

Regular reaction:

I-statement:

Communication Skills in Negotiation

5. Efficient Use of Questions

Types of Questions:

Open-ended Questions:

Questions intended to help the other party open up, and to invite him to express himself. They can be used to empower the other party, by letting him know that he's on stage, with a friendly spotlight on him, and with an encouraging, attentive audience. Besides promoting trust-building, these questions allow us to get a better understanding of what is motivating the other party, as well as learning his view of the situation.

Closed Questions:

Questions intended to focus on an issue, to obtain concrete or specific information or to lead the other party in a particular direction. These can help clarify or organize information previously obtained and require focused - and often brief - replies.

Yes/No Questions

Used for absolute clarification of an issue, Yes/No questions require definite and concise replies.

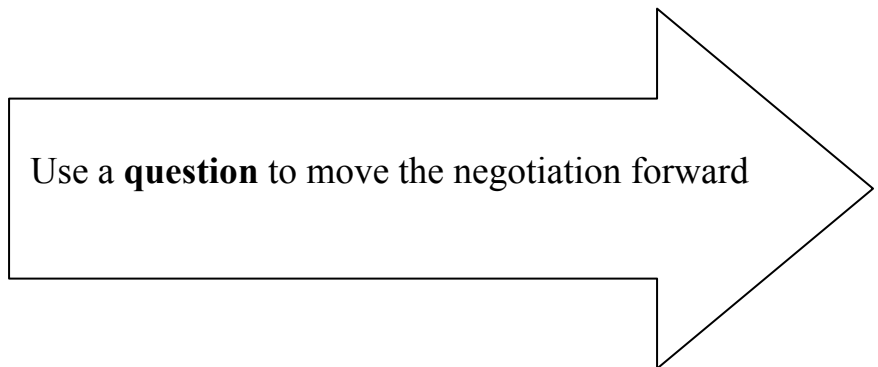
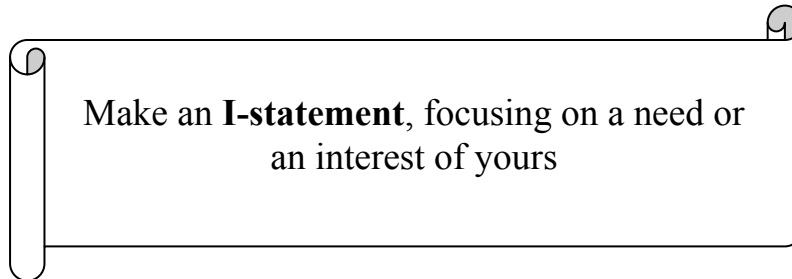
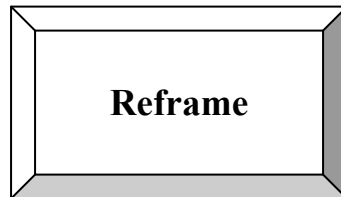
Open-Ended Questions	Closed Questions	Yes/No Questions
Have you thought about how much you'd be willing to pay for this?	How much would you pay for this?	Would you pay 1,000\$ for this?
There – that's my offer. What do you think?	When would you like to discuss my offer?	Is my offer acceptable?
Any suggestions?	Which one of these offers do you prefer?	Can we sign the deal?
What do you think about people who drive pink cars?	What color is your car?	Is that your car?
What are your plans for today?	Where are you?	Are you in the office?

Making Every Word Count
Communication Skills in Negotiation

Negotiation Sentence Structure

LISTEN!!!

Reflect



**Practical Tips for
Drafting Agreements**

Yael Efron
Attorney & Mediator

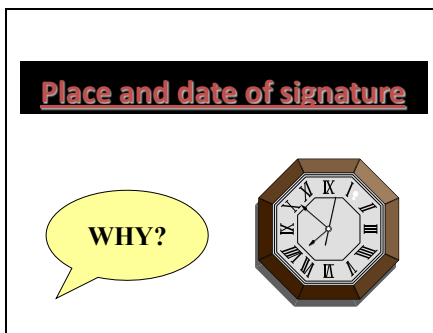
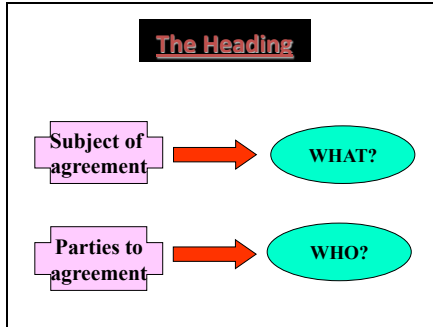
Structure of Agreement

Heading

Introduction

Body

Signatures



Introduction

What brought the parties to
legally bind themselves?

Also known as:

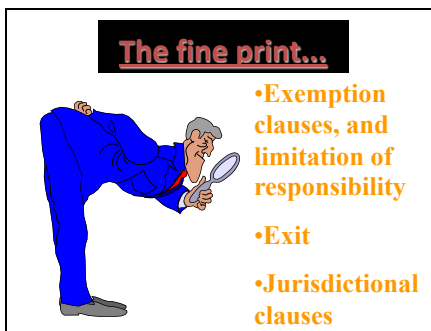
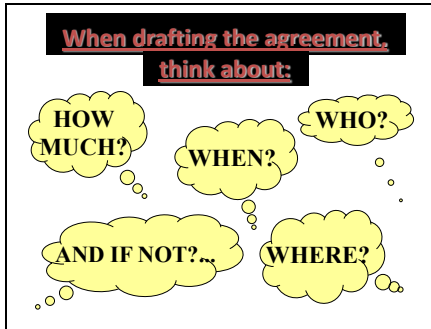
whereas

and whereas...

What is it good for?

The Content

- Should articulate what the parties want
- Should be expressed clearly
- Should be spelt-out in details
- Should be fair and balanced



The signatures



What do they mean?

