

Lesson 4
What are the key elements of a negotiation?

Lesson Objectives

Students will be able to:

- Examine the key principles relating to negotiations
- Formulate a negotiation plan for their side.

Materials

- Handout 11: Principles of negotiation
- Handout 12A: Confidential Information for Plaintiff’s Counsel
- Handout 12B: Confidential Information for Defendant’s Counsel
- Handout 13: Negotiation Planning and accompanying answer key

Lesson Assessments

- Negotiation planning sheet for mock negotiation

Instructional Activities

Anticipatory Set

- What do you think about when you hear the term negotiation? What is a negotiation? What are things we negotiate over? What is the goal of a negotiation? Ask students to journal for five minutes and share out their responses.

Direct Instruction

- Although movies and television typically focus on the trial part of the litigation process, in real life, most cases never go to trial. Judges and lawyers try to settle disputes out of court through negotiation, which provides the opposing parties with an opportunity to reach an agreement that is acceptable to all. This week we have read about the development of the fictional case *Davis v. Ann Arbor School Board*. We have learned about the law and tried to predict what might happen if the case went to a court. But in this case – as in nearly all cases – the judge has ordered the parties to engage in negotiations before scheduling a trial. That means Kenji Davis and his lawyers must sit down with the Ann Arbor School Board and their lawyers, to try to work out an agreement. Before we begin to prepare for this negotiation, we are going to think about negotiations more broadly.
- At the heart of every negotiation is a conflict between two parties. This conflict, however, does not mean that the parties are completely opposed to each other on every point.
 - Consider a scenario where there are two people are fighting over one orange. Adam needs the orange peel to make an orange pound cake. Beth needs the flesh

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- of the orange, but not the peel, to make juice. Because there is only one orange, the parties might try to negotiate to decide who gets it.
- If the parties approach the negotiation in an adversarial mindset, thinking they need 100% of the orange, only one party will leave the negotiation satisfied -- Adam or Beth could get the whole orange while the other party gets nothing.
 - Alternatively, Adam or Beth could split the orange in half, leaving both parties only partially satisfied, because Adam could only make half as much cake and Beth could only make half a cup of juice.
 - These outcomes approach the negotiation as a "zero sum game" -- a situation where Adam's gain equals Beth's loss, and Beth's gain equals Adam's loss. In a zero sum game, when one party gains something, the other must necessarily lose something.
 - However, negotiations do not have to be that way. Negotiations can be "value adding," which means that the parties identify their respective interests and cooperate to come up with solutions that will satisfy both of them. Instead of framing the negotiation as each party wanting 100% of the orange, it is better to frame it as each party wanting to be 100% satisfied.
 - Approaching the negotiation this way would allow Adam and Beth to discuss their underlying interests. In this scenario, Adam only needs the orange peel and Beth only needs the flesh. If the parties can figure this out through cooperation and communication, they will both leave the negotiation 100% satisfied.

Guided Practice

- Distribute **Handout 11: Principles of Negotiation**. Instruct students to read through the sheet, annotating important concepts. Have students pair up and discuss:
 - Why it is important to focus on the sources of conflict in a negotiation?
 - How does analyzing the sources of conflict help you to achieve a mutually beneficial solution?

Students will share their responses with the class.

- Divide students into groups of four.
 - Assign two members to the role of Plaintiff's counsel, representing Kenji Davis. Give them **Handout 12A: Confidential Information for Plaintiff's Counsel**.
 - The other two members will be Defendant's counsel, representing the school board. Give them **Handout 12B: Confidential Information for Defendant's Counsel**.
- Instruct students to read their confidential information sheet to find out what their client wants. Remind students that these sheets are confidential and they cannot share the information with their opponents, or anyone else on the opponent's side. After they read, they may share their initial reactions, questions, or concerns quietly with their partner.

Independent Practice

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- Distribute **Handout 13: Negotiation Planning**. For the chart, instruct students to fill out their client's side with specific details that they learned from their confidential information sheets, and to take their best guess on the opponent's side based on what they have learned from the depositions and case materials. An answer key is attached.
- Read through the questions with students to check for understanding, and then instruct students to spend the remaining class time with their partners completing the questions.

Homework:

- Have students complete their negotiation planning sheets so they are prepared for tomorrow's negotiation.