

International Business Negotiations

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### **International Business Negotiations**

Business lawyers play an integral role in determining the character of commercial globalization. Lawyers design the structures, facilitate the deals, and define what is possible in nearly every sector of international business. When two or more parties come together to make an international business deal countless steps lay between them and the realization of their desire. Without a lawyer, parties from different countries seeking to craft a mutually beneficial deal are likely to encounter numerous roadblocks and potentially insurmountable challenges to achieving their aims. Like an architect hired to build a home, an international business lawyer must clarify what her client wants the final deal to look like, investigate any contextual limitations, and then create a design that best accommodates those objectives within the given parameters.

In order to build a strong foundation for negotiations, when approaching an international business transaction a lawyer must first engage in rigorous fact-finding and comprehensive analysis of all the available data. To familiarize oneself with the data, a savvy business lawyer must proactively educate herself on all aspects of business and law relevant to the pending deal. Her role in analysis goes beyond simple legal and factual research. The chief executive of a large U.S. firm looking to join forces with a small Liberian business owner can easily look up relevant country data or request to view the company's credit history. A lawyer's role is to collect the data and extract all the

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information that can be drawn from the facts. She must be aware of the entire context of the potential transaction; the political situation, labor issues, tax aspects, intellectual property protections, capital infrastructure, financials, overall purpose of the deal, cultural nuances, and areas of uncertainty that may invite future problems. Knowledge of the context surrounding a potential international business deal helps the lawyer understand the weaknesses and strengths of her client's position in future negotiations.

Great insight can be gained from actively viewing all the collected data from the perspective of the opposing party. Everyone, including companies, has blind spots and a degree of self-focused myopia. By analyzing information from the other side of the table the lawyer gains insight into what the other team wants out of the deal or what they may view as a weakness in her client's position. The pay-off of this preparatory work is evident at every stage in a negotiation. As I will explain later in this paper, the Malundian Cassava Corporation (MCC) achieved a transactional agreement with KJH Pharmaceuticals (KJH) that far exceeded what the small African cooperative originally believed they could obtain through negotiations. While flexibility and creativity were vital to MCC's success, their preparatory analysis gave MCC a constant advantage over KJH throughout the negotiation.

In asking the right questions and providing a clear image of all the facts, a transactional lawyer helps uncover the client's ultimate objectives. A client is better able to define what she wants out of the negotiation after she has a firm idea of where she stands and what to expect from the opposing party. A clear set of objectives is the key to

preparing an effective negotiation strategy and achieving the best business model for a client. Set goals provide direction. The client may have a host of demands at the onset, but many of those original goals may be counterproductive or aimed far below what they could ultimately achieve. What one party originally wanted may be a far cry from what she wants after all the facts have been explained to her. A prime example is MCC's interest in creating a fertilizer produced from cassava by-product. Before all the facts were assessed, MCC was not aware that by selling cassava extract to KJH they created an opportunity to build a lucrative fertilizer industry which could potentially have dramatically positive effects on their economy. Fact analysis and contextual research allow a lawyer to show her client everything she *could* get out of a deal.

Once the lawyer has helped the client decide precisely what she wants out of the international transaction, it's time to make a plan of action for the negotiation.

International business transactions differ significantly from local deals in the number of obstacles parties must overcome at the bargaining table. Parties on either side of the table may be worlds apart in terms of geography, culture, business experience, and their ideas of how the deal or negotiations should transpire. To pave the way for positive communications, transactional lawyers work to establish common ground between the parties.

There may be cross-cultural differences between parties in an international transaction and it is the job of a lawyer hired to conduct negotiations to educate himself on the culture as well as exercise sensitivity to these differences when representing his

client. Cross-cultural skills and sensitivity can help both teams avoid unnecessary conflicts or misunderstandings that may taint otherwise positive negotiations. The majority of what we communicate with each other is nonverbal. Therefore, different interpretations of body language or meanings attached to certain gestures can have a detrimental effect on an international negotiation. An American business man's perfectly innocent hand gesture may translate into an incredibly rude offense to the Zambian executive sitting across from him.

My time living abroad in cultures highly dissimilar from my own has taught me the importance tailoring our relations with others to context around us. During my first few weeks of teaching in Micronesia, I was constantly frustrated. Whenever I asked my students if they had done their homework, they would say nothing. I had grown resentful of the local males because almost every time I asked one of them a question they would respond with what I took to be an inappropriate flirty facial gesture. After more time on the island, it was explained to me that "yes" in Ponapean is most commonly expressed by raising ones eyebrows. As it turns out, people were communicating with me all along and it was only my ignorance to their language that caused my irritation. These 'lost in translation' lessons apply to simple exchanges between people of similar backgrounds just as much as they do cross-culturally. It is critical that lawyers exercise diplomacy in negotiations and pay careful attention to the nonverbal messages that transpire between the parties.

In our negotiations with KJH there were several seemingly innocent verbal and non-verbal triggers that elicited powerful responses from the other team. After several negotiations it became obvious that references to KJH's poor reputation would send them into a tizzy. Our knowledge of what signals would provoke reactions in them enabled us to use these triggers to our advantage. Other triggers we were not aware of until the final debriefing. At one point in the negotiation, KJH displayed an uproarious reaction to MCC's proposed distribution of ownership percentage and emphatically refused our offer. At the time, we could not understand their reaction. Eventually, they accepted the same distribution of ownership that they had so forcefully shot down before. We were dumbfounded until the last negotiation when KJH explained the president of KJH's first team apparently detests when someone holds their finger in the air to signify "wait one moment." Our unwitting use of this common gesture sparked his outburst that led to their refusal to accept MCC's terms. While misunderstandings like this are often inevitable, a sensitivity towards others reactions and a mastery of one's own emotions are necessary ingredients to positive negotiations.

Corporate law, particularly in international negotiations, involves psychology. When selecting the best tactic for the current conditions, a lawyer must constantly read the opposing party to understand where they are coming from and how to get them into the mindset most conducive to reaching an agreement. There are no set rules for which tactic to use in a given situation. The context and personality of each negotiation determines the best way to approach a problem. MCC's negotiations with KJH taught me

the value of mastering our own emotions when communicating with others in a business setting. A vast majority of contentions that arose during our discussions with the other team occurred because people on both sides allowed themselves to get too personally attached to the items under discussion. A lawyer retains a degree of objectivity that is difficult for an individual party to the agreement to achieve because their interests are more intimately tied to the negotiation's outcome. This is one of the many reasons lawyers conduct negotiations *on behalf of* their clients. These social and interpersonal skills carry over into the lawyer's role of advisor and consultant to her client as well.

Corporations looking to invest heavily or bind themselves to a foreign business rely on a lawyer to guide them through the experience. If parties felt they could navigate the deals themselves, lawyers would only be called in to explain the laws and draft the papers. Clients want a lawyer they can trust to represent their best interests and create a sustainable deal that resolves any major issues likely to arise in the future. To fulfill these demands a business lawyer needs strong personal and problem solving skills. Rapport is invaluable. A lawyer's job is to ensure the client is never in the dark about the dealings within a negotiation or pending transaction. If negotiations get bumpy and the client isn't kept up to speed, feelings of insecurity and fear breed. Emotions cloud good judgment and the client may lose sight of what he really wants out of the negotiation in the first place; focusing more on regaining power instead of crafting a lucrative deal. It is vital that a transactional lawyer work *with* her client. Any updates in negotiations should be

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discussed in conjecture with explaining the context behind any problems. Instead of sending dry memos, a lawyer should keep a fluid open relationship with clients. Working as team, the lawyer won't lose sight of a client's interests during the course of negotiations and can guide them towards the most appropriate solutions to whatever problems arise.

In connection with their role as a guide to negotiations, the transactional lawyer must evolve with the negotiation. Inevitably, unexpected issues will surface during the course of a business deal and parties will encounter unforeseen roadblocks. Perhaps one party will refuse to budge on an issue without any logical reason for doing so. Aspects of an agreement that were hardly mentioned in any of the communications may be a contentious deal breaker in the last negotiation. In all our preparatory work we never imagined KJH would be doggedly inflexible about exclusivity. Public relations were never an issue until MCC surprised KJH with a press release and arguments over publicity almost killed our nearly finished deal. The unexpected is to be expected in international business negotiations and living transactions. For this reason, a transactional lawyer must use flexibility and creativity to be successful. There should always be a plan b and c. To overcome challenges a lawyer needs to hold strong to priorities, but be willing to relent on unimportant issues and offer imaginative means for implementing the ends her client seeks. With the right attitude, knowledge, and skillset, everything is negotiable. By being open and creative, the business lawyer helps construct agreements

that challenge the existing patterns of global transactions and exceed the expectations of all parties involved in the deal.

When finalizing an agreement, a lawyer must honor her social responsibility by giving full respect to all applicable domestic and international laws. A lawyer's social responsibility is defined by the laws with which she works and code of ethics by which she is bound. International transactional lawyers play a valuable role in using laws to achieve a client's aims, but laws cannot not only be seen as a means to crafting the end deal. Laws are carefully created to protect and promote the best interests of their country. It is the duty of the international lawyer to respect those laws and their underlying purposes.

The value of the lessons explained throughout this paper are illustrated by the successful windfall MCC, a small African cassava cooperative, achieved through negotiations throughout the last semester with KJH, a large multinational pharmaceutical corporation. In all of its dealings with KJH, MCC played each of the roles outlined above to the best of our ability. We began by critically analyzing the facts, financial figures, and contextual setting of the transaction. We put effort into learning KJH's dominant personality traits by looking over their business practices, history, and style of communication. One of our first exercises involved clearly listing out our goals and working out which business models best accommodated those aims. With such strong preparatory work, we entered negotiations knowing what we wanted and what KJH ultimately sought to get out of the deal. We knew from their past business ventures that



KJH was controlling and from their communications with us that they believed they held all the power in our interactions. This insight into their personality allowed us to manipulate situations to our advantage; we could push their buttons when we wanted a strong reaction or frame issues in terms they liked so as to get what we wanted approved. After reviewing their investment in a synthetic extract and the shelf-life of their patent, our understanding of their future plans to pull out of the deal enabled us to protect ourselves by demanding a springing license. We prepared to succeed and it paid off in the final terms of the agreement.

It is important to admit our own faults and learn from opposing negotiators. KJH had a unified strategy. The KJH team went over every communication and negotiation plan together as a group. They had negotiating principles everyone would follow unconditionally throughout the negotiations. The collective commitment and time they put into their work showed off. During negotiations KJH presented a united front, they rarely seemed 'tripped up' by our proposals and spoke from what appeared to be a very powerful position. MCC had a different approach. Although we reviewed everything together as a class, MCC had two separate teams that drafted communications and negotiation plans independently. Several times while the other MCC team was negotiating, I cringed as they backtracked on our progress the previous week or stated reasoning for a proposal that contradicted what we had explained to KJH in the past. I understand this style of negotiation could be seen as a positive tactic that kept the other team on their toes, but from my perspective it appeared disorganized and unclear. The benefit

of our strategy was that it opened the door to more ideas. While I recognize this advantage, I think MCC would have a stronger strategy if we devoted slightly more time to assigning roles and educating each other on our plans.

KJH displayed commendable organization in all their work, but their rigid positions on issues and failure to move beyond their own perceptions of the transaction made for a very ineffective negotiation strategy. Hubris harmed KJH. As a large pharmaceutical company dealing with a poor African cooperative, the KJH team assumed from the onset that they had all the power in our relations. The result of this overconfidence was a lack of effort to understand our position or research their opposing party. They didn't look deeply into the social or political context of Malundi because that was of no interest to them, as their president said, they "only care about business." KJH could not understand our preoccupation with securing comprehensive employment protections because they overlooked the crucial fact that we are a poor country with a large adolescent population and high underemployment. Their mistakes arose from a lack of effort. Their failure to analyze our financials correctly meant they spent the entire negotiation operating on the wrongly assumed premise that the fertilizer industry was an independently profitable venture. They failed to do enough analysis and give sufficient weight to the legitimacy of our proposals. As a result, KJH was short tempered with MCC's requests and constantly threatened to walk out on the deal. Overall, KJH had an ineffective negotiation strategy because of their lack of effort to see the transaction from any point of view other than their own.

Thankfully, MCC's teams proved to be apt negotiators. We used our knowledge of KJH and negotiation tactics to guide discussions in our favor. Our creative proposals and controlled responses to KJH's domineering propositions changed the tone of negotiations. Regardless of KJH's behavior, we remained professional and focused on possibilities. Eventually, the other side fell in stride. At the final negotiation, KJH exhibited a more respectful presence and compromised on issues, like exclusivity, that they had refused to even discuss in the past. From the beginning, we viewed success as reaching an agreement that made both teams happy. We believed an ideal agreement was possible because we had an idea of what each side hoped to gain from the transaction and how to achieve it. Our focus on our goals and flexibility in achieving them enabled us to craft an agreement that exceeded both parties' initial expectations. I am confident MCC and KJH crafted a successful and sustainable transaction.

The approach a lawyer takes to each step in a negotiation determines the tone of the proceedings and relative success of the ultimate transaction. Ingenuity, hard work, an open mind, and social intelligence are necessary ingredients for an effective negotiation. MCC negotiated using every means available, put one hundred percent into their preparatory analysis, and refused to limit success by defining it as 'getting my client more than the other party in the deal.' We had all the makings to produce a fruitful agreement.

In the end, attention to the process proved to be the key to reaching a successful international business agreement. As the architect of the negotiations and ultimate

transaction, the lawyer must enact each step of the negotiation wheel; analyze the given facts, clarify the aims of the parties, prepare a structure and strategy for negotiation, constantly review the progress of negotiations, and plan what the final business venture will look like. Skipping a step can result in a loss of opportunity for the client in the form of a poorly performed negotiation. Approaching each step with flexibility and creativity can result in an international transaction deal that changes the way the world does business.