



TEACHING MATERIALS ON EXTRAJUDICIAL SETTLEMENT NEGOTIATION

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ABSTRACT

This article addressed an extrajudicial settlement negotiation case in Brazil, aiming at improving the negotiation skills of lawyers through a two-party role-play simulation. Therefore, this work sheds more light on the distributive negotiations and presents a complete set of teaching materials, useful for scholars, instructors, managers, lawyers, and other practitioners. The subject was chosen because of replicability in business and lawyering scenarios. This case was designed mainly to prevent the conflict escalation that generally ends in the Court of law. Key findings pointed out the necessity of improving negotiation skills, such as understanding the other party's underlying interests, value creation, and joint fact-finding to achieve mutual benefit deals. Further implications suggest that the current teaching case may be useful for developing negotiation skills, which can also end in Court. Discussion and future research recommendations comprise the present investigation.

Keywords: Negotiation, Extrajudicial settlement, Teaching materials

INTRODUCTION: -

This article addressed the one single case on the extrajudicial settlement in the Federal District (DF), Brasília, center-west Brazil, as the unit of analysis (Yin, 1988).

This teaching case compiled a full set of teaching notes and case dynamics and instructions (see Appendixes). The objective is to provide a new perspective in similar extrajudicial settlements in Brazil, which helps negotiation teachers, scholars, lawyers, professors, instructors, mediators, decision-makers, and practitioners.

Negotiation is defined as "a process of communication by which two or more persons seek to advance their individual interests through joint action." (Salacuse, 2006, p. 7). Also, "Negotiation is a process of communicating back and forth for the purpose of reaching a joint decision." (Fisher, Ury & Patton, 1981, p. 20).

We followed Raiffa (1982), who has defined distributive negotiations as "one single issue, such as money, is under contention" (p.33), and integrative negotiation as a "bargaining—in which there are two parties and several issues to be negotiated" (p.131). Then, we followed the mutual gains approach (Susskind & Cruikshank, 1987; Susskind & Field, 1996). Finally, we followed the Four-Type negotiation matrix (Dias, 2020), by which case is classified as Type I negotiation

(Two parties, one issue negotiated), as depicted in the following Figure 1:

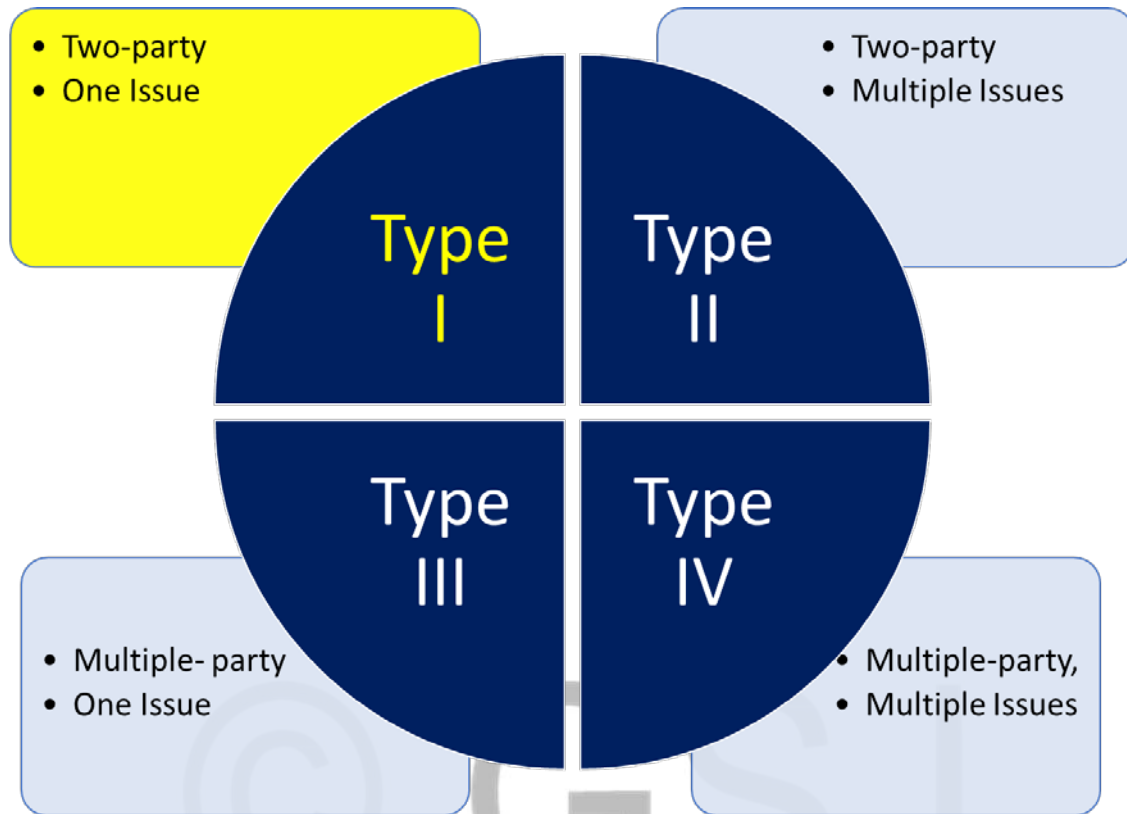


Figure 1: The Four-Type Negotiation Matrix. Source: Dias, 2020. Reprinted under permission.

The Four-Type negotiation matrix helps classify a given type of negotiation, and then it moves it into another Type, where parties can find better mutual deals. The Four-Type Negotiation Matrix is rooted in past research (Dias, 2020; Raiffa, 1982; Fisher Ury and Patton, 1981; Sebenius, 1992; Ury, 2015; Susskind & Field, 1996; Salacuse, 2008; Rinehart & Page, 1992; Pruitt & Rubin, 1986). In the next section, we present the methods and case limitations. Observe in Figure 1 the light yellow to highlight the Type I negotiation case.

METHODS AND RESEARCH LIMITATIONS: -

This study is a victim-rescuer case (Karpman, 1968), in which the victim is Joana, hit by a bus while going to the Law School (see Appendix), and the rescuer the bus driver. This case combines qualitative approaches, such as case study with role-play-simulation. The case followed the inductive rationale and interpretivistic approach. The unit of analysis (Yin, 1988) is the situation as mentioned above.

The present research is primarily restricted to the Brazilian civil legislation. Other countries and laws should be investigated separately. This case is also limited and supported by Goffman's dramaturgical theory (1959, 1961) and Karpman's drama triangle (Karpman, 1968).

ROLE PLAY SIMULATION: EXTRAJUDICIAL SETTLEMENT NEGOTIATION: -

The case starts with Joana, who attends Law School at the University of Brasilia - UnB. During the week, she uses public transport to travel from home to the University.

On a Monday, José, the bus driver, was surprised by a strange noise coming from the front door: Joana fell off the bus, hitting her head against the sidewalk. The vehicle has a sensor that does not allow the vehicle to move with the door open, but it failed, and Joana fell off the bus.

Upon noticing the incident, José stopped the vehicle and provided help to the victim, being promptly attended by a unit of Mobile Emergency Care Service, which fortunately passed by.

According to medical records and reports, cranioencephalic trauma, cut in the posterior region, and foci of hemorrhage in Joana's brain were detected, causing significant lesions with continuous effects, especially concerning raging headaches.

The bus company provided all assistance and paid for all the treatment costs: locomotions, hospitals, medicines, physiotherapy, and psychological assistance to the young woman for one year.

However, after a year of continuous treatment, the bus company owners thought it was appropriate to make a definitive extrajudicial indemnity agreement with Joana, to put an end to the monthly expenses and dismiss the case.

On the other hand, Joana's family Joana maintains that assistance must continue, and argues that the young woman's dream of graduating from Direito has been interrupted. Thus, they intend to achieve a good amount in the realization of any agreement.

At this point, confidential information is made available for both parties (See Appendix II) to negotiate in terms of financial reparation (distributive negotiation).

Finally, the case dynamics and applications are presented in Appendix I. In the next section, and we discussed the case findings.

DISCUSSION: -

This case is a particular case of rescue and victim cases (Karpman, 1968). Evidence point Joana as the natural victim of an accident. However, the lawyers may consider both alternates between rescuers and victims during the negotiation.

The negotiation was designed for face-to-face interactions. However, due to the coronavirus pandemic, most negotiations are conducted remotely. In such a scenario, the parties should engage in this role-play remotely.

The present role-play simulation has implications in the following fields of study: (a) Non-governmental organizations (Paradela,; Dias, M. O.; Assis; Oliveira, J.; Fonseca, R. (2019); (b) carmaker industry (Dias, M. O., Navarro and Valle, 2013, Dias, M. O., et al., 2014; Dias, M. O., et al., 2013); (c) aircraft manufacturer industry (Dias, M., Teles, and Duzert, 2018; Dias, M.O. and Duzert, 2018); (iii) public agents (Dias, M. O., 2018); (d) copier manufacturer industry (Dias, M.O., 2012); (e) non-market forces (Dias & Navarro, 2018); (f) retail business (Dias, M. O., et al., 2015; Dias, M. O. et al., 2015, 2014); (g) Craft beer industries (Dias, M.O. and Falconi, 2018; Dias, M. O., 2018); (h) social mediation (Dias, M. O. & Teles, 2018); (i) governmental business relations (Dias, M. O. & Navarro, 2017); (j) generational interactions (Aylmer & Dias, M. O., 2018); (k) e-business negotiation (Dias & Duzert, 2017); (l) streaming video industry, such as Netflix (Dias, M. O., & Navarro, 2018); (m) mining industry (Dias, M. O., & Davila, 2018); (n) civil construction (Dias, M.O., 2016), finally (o) debt collection negotiations (Dias, M.O., 2019, 2019b; Dias, M.O. and Albergarias, 2019).

In the simulated scenario, and with the emotions off the negotiation grid, the parties may behave differently as in real case scenarios. They may be more concessive than in real life.

Finally, even with a Brazilian scenario, other cultures may take advantage of the fact that the negotiation did not escalate into a non-returning point, invariably ending in the court of justice. In sum, the negotiators should negotiate without the perspective of the case judicialization. If so, the legislation applicable in this case for each country should be observed.

FUTURE RESEARCH AND CASE LIMITATIONS

This teaching material investigated an extrajudicial settlement between two parties, in the Brazilian scenario. Other scenarios, cultures, and countries are encouraged to be investigated in future studies. Finally, strategies to better the agreement regarding the Four-Types negotiation matrix should also be investigated in future studies.

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APPENDIX I

Teaching notes

Scenario: the case illustrates the difficulties faced by the parties to avoid an accident be treated in the Court of Justice in Brazil. For other countries, different laws and particular issues, such as different negotiation processes, should be considered.

Mechanics: parties should take 30 min to 1 hour to read the case and to prepare themselves to negotiate. Negotiation mapping is strongly encouraged to be used additionally to help planning the negotiation – 30 min to 1 hour of negotiation plus 30 to one-hour debriefing session. In total, one hour and a half to three hours' total time for this exercise.

Major Lessons: to migrate from distributive into integrative negotiations; to map and focus on underlying interests; to practice empathy towards each other; to develop promptness in creating mutual value to be later distributed.

Objectives: this exercise intends to discuss the role of lawyers in a distributive, Type I negotiation. That negotiation should be seen not as an intrusion devoted to promoting disruption, but one aid to promote consensus between two different parties. One crucial objective is related to process control.

MAIN FEATURES	
Time required	1 hour – 2 hours
Number of participants	2 parties, two lawyers
Groups involved	No
Agent present	No
Third part present	No

APPENDIX II - PARTIES' ROLES

PART 1

◆◆ LAWYER OF THE BUS COMPANY◆◆

GENERAL INFORMATION

Joana attends Law School at the University of Brasilia - UnB. During the week, she uses the public transport to travel from home to the University.

José Aguiar, bus driver, 57-year-old married, is the bus driver. His activity he has been carrying out for 29 years. He is considered an exemplary employee, and lives were receiving praise from superiors, colleagues and passengers, and even awards for spending long periods without causing or suffering accidents.

On a Monday, Joseph was surprised by a strange noise coming from the front door: Joana fell off the bus, although at no point did José trigger the door opening button. The vehicle has a sensor that does not allow the vehicle to move with the door open, which is why it is not known what happened.

Upon noticing the incident, José stopped the vehicle and provided help to the victim, being promptly attended by a unit of Mobile Emergency Care Service, which fortunately passed by.

In the hospital, according to medical records and reports, cranioencephalic rheumatism - TCE, cut in the posterior region, and foci of hemorrhage in Joana's brain were detected, causing significant lesions with continuous effects, especially concerning violent headaches.

The concessionaire company of the bus that José directed provided all assistance and paid for all the costs of treatment: locomotions, hospitals, medicines, physiotherapy, and psychological assistance to the young woman.

However, after a year of continuous treatment, the owners of the bus company thought it was appropriate to make a definitive indemnity agreement with Joana, to put an end to the monthly expenses and dismiss the case.

On the other hand, Joana's family Joana maintains that assistance must continue, and argues that the young woman's dream of graduating from Direito has been interrupted. Thus, they intend to achieve the right amount in the realization of any agreement.

CONFIDENTIAL INFORMATION

You are the company's lawyer. The owners of the company called him to negotiate to carry out an out-of-court settlement with Joana. The company admits the delay in a definitive agreement will entail more costs with assistance to the young woman. This case is to count on the possible damage to the image and the good name. Thus, the owners of the company want to close the case soon and authorize their lawyers to pay up to BRL 60,000.00, what they think fair.

You consider the value high, since Joana had adequate medical treatment throughout the period, from the accident, and had no permanent damage.

Consulting the jurisprudence of the local Court, in similar cases, the bus company lawyer found that it has applied moral damage at R \$ 6,000.00. You consider a low value to be fair, given all the zeal with which the company has given Joana.

When looking for Joana's lawyer for the first time, you offered R \$ 5,000.00, being promptly denied by Joana. The lawyer even argued that he knew his rights in case of filing an indemnification action, which is why he intends to receive BRL 55,000.00. You notice that the deal is a long way off and you plan a counteroffer. Its reserve price is R\$ 60.000,00. Prepare to negotiate with Joana.

PART 2

◆◆ JOANA'S LAWYER ◆◆

GENERAL INFORMATION

Joana attends Law School at the University of Brasilia - UnB. During the week, she uses the public transport to travel from home to the University.

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On a Monday, Joseph was surprised by a strange noise coming from the front door: Joana fell off the bus, although at no point did José trigger the door opening button. The vehicle has a sensor that does not allow the vehicle to move with the door open, which is why it is not known what happened.

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On the other hand, Joana's family Joana maintains that assistance must continue, and argues that the young woman's dream of graduating from Direito has been interrupted. Thus, they intend to achieve the right amount in the realization of any agreement.

CONFIDENTIAL INFORMATION

You are Joana's lawyer. The company has taken excellent care of Joana, paying all medical expenses for continued treatment and psychological support, which recently completed a year.

A week ago, he received a contact from the lawyer of the bus company and set up a meeting for negotiating a possible out-of-court indemnity settlement with Joana, his client.

The company's lawyer sought it and offered BRL 5,000.00 extrajudicial compensation, arguing that the Court has sentenced at this level. When you inform Joana, you immediately receive a negative response. Joana's mother argues that the company interrupted the dream of graduating from law school and should have more respect for Joana. Joana is irreducible and wants to receive BRL 55.000,00.

You notice that the parties are goods far from an agreement. However, Joana's mother let slip that a value between R \$ 20,000.00 and R \$ 25,000.00 would be fair to the case. Get ready to negotiate with the company's lawyer.

