

BEYOND THE APARTMENT: A FAMILY NEGOTIATION CASE STUDY

**ALÉM DO APARTAMENTO: UM ESTUDO DE CASO DE NEGOCIAÇÃO
FAMILIAR**

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ABSTRACT

This article is a descriptive case study of a family law negotiation. It outlines how an initially distributive conflict over an apartment residence evolved into a negotiation about the ownership rights and interests in the property and its usufruct, and how the parties attempted to create value in the property. The conflict was analyzed through the interests versus positions of the parties, their BATNA and ZOPA, and through the prism of integrative negotiation. The study also analyzed how the parties tried to create alternative settlement options and how negotiating through legal representatives created problems for the negotiation. The study uncovered the reasons for the deadlock despite the parties' willingness to negotiate.

Keywords: negotiation; family dispute; BATNA; ZOPA; interest-based negotiation; value creation; legal negotiation; case study.

RESUMO

Este artigo é um estudo de caso descritivo de uma negociação de direito de família. Ele descreve como um conflito inicialmente distributivo sobre uma residência residencial evoluiu para uma negociação sobre os direitos e interesses de propriedade sobre a propriedade e seu usufruto, e como as partes tentaram criar valor no imóvel. O conflito foi analisado através dos interesses versus posições das partes, seus BATNA e ZOPA, e pelo prisma da negociação integrativa. O estudo também analisou como as partes tentaram criar opções alternativas de acordo e como negociar por meio de representantes legais criou problemas para a negociação. O estudo revelou as razões para o impasse apesar da disposição das partes em negociar.

Palavras-chave: negociação; disputa familiar; BATNA; ZOPA; negociação baseada em juros; criação de valor; negociação jurídica; estudo de caso.

RESUMEN

Este artículo es un estudio de caso descriptivo de una negociación en derecho de familia. Describe cómo un conflicto inicialmente distributivo sobre una residencia de apartamentos evolucionó hacia una negociación sobre los derechos e intereses de propiedad sobre la propiedad y su usufructo, y cómo las partes intentaron crear valor en la propiedad. El conflicto se analizó a través de los intereses frente a las posiciones de las partes, sus BATNA y ZOPA, y a través del prisma de la negociación integradora. El estudio también analizó cómo las partes intentaron crear opciones alternativas de acuerdo y cómo negociar a través de representantes legales generó problemas para la negociación. El estudio descubrió las razones del estancamiento a pesar de la disposición de las partes a negociar.

Palabras clave: negociación; disputa familiar; BATNA; ZOPA; negociación basada en intereses; creación de valor; negociación legal; estudio de caso.

1 INTRODUCTION

Negotiation is a mechanism for managing conflict, creating value, and making decisions when parties depend on one another (Bazerman & Moore, 1994; Fisher *et al.*, 1981). On the contrary, value claiming and value creating should go hand in hand. Furthermore, negotiators must manage the relational, emotional, and informational dimensions of negotiation to make good decisions (Bazerman & Moore, 1994; Dias, 2020; Shell, 2006). In the context of legal disputes, negotiations typically occur while parties face uncertainty, pressure from the other side, and the option of litigation.

Family law disputes are complex and fraught with emotions for the parties and their lawyers. Therefore, negotiation through an interest-based approach is crucial to resolving disputes, even when parties start at opposite ends of the negotiation process. Dias (2020c) highlighted that an interest-based negotiation framework helps parties in conflict identify and negotiate through value creation, which might lead to an agreement better than what each could have achieved by remaining stuck in conflict. Santos and Dias (2024a, 2024b) emphasized the importance of examining negotiation behaviors, processes, and trust dynamics across different types of negotiations, including family law disputes. However, mediating disputes is challenging. Santos and Dias (2024a) highlighted several constraints that affect parties' communication and negotiation process, including the costs of having lawyers. Santos and Dias (2024b) also highlighted that trust in negotiation is affected by several factors, including virtual communication, lawyer-representative factors, and the presence of third parties. The challenge is even greater when the disputing parties communicate through their respective lawyers, as their interests and information may be distorted or

compromised. As Santos and Dias (2024b) observed, "...negotiation between parties through lawyers may be influenced by parties' lawyers in several ways including selective disclosure of information."

Distributive conflicts, in which one party tries to achieve its interests at the expense of the other party, against the background of interdependence, can be avoided if both parties search for issues that contain potential for value creation, so-called integrative conflicts. In most cases, the focal points of a negotiation, i.e., the positions held by the parties, do not reveal their true interests. It is therefore crucial to distinguish between interests and positions (Fisher & Ury, 1981). The parties' options, as well as the best alternatives to a negotiated agreement (BATNA), and the zone of possible agreements (ZOPA) of the parties (Fisher & Ury, 1981; Raiffa *et al.*, 2002) also have to be taken into account when attempting to assess negotiation opportunities and to evaluate the quality of offers and counteroffers within the negotiation process under way. In legal disputes, the negotiation parties' best alternative to the agreement under negotiation is, as a rule, the litigation already in progress. Several studies were developed to analyze negotiation processes and their results in very different contexts such as business negotiation, real estate or construction projects, health care, public sector or contractual disputes (Dias, 2020d; Dias & Navarro, 2020; Oliveira *et al.*, 2025; Samartin & Dias, 2025; Valente & Dias, 2023; Vidaletti *et al.*, 2025). These studies, conducted over many years, identified several key variables for effective negotiation: preparation, communication, trust, and generating multiple alternatives before reaching an agreement (Dias *et al.*, 2020). Furthermore, negotiation through intermediaries, including lawyers, increases the complexity of the negotiation process due to communication constraints between the representative and the party they represent, as well as information distortion or selective transmission (Dias & Lopes, 2020; Salacuse, 2006; Shell, 2006).

Communication is a key element in negotiation and even more so when legal representatives are involved. These representatives not only communicate on behalf of their clients but also decide the best strategic step to take, inform their clients of the negotiation's legal implications, and even draft proposals. Thus, although legal representation can help parties negotiate more rationally and avoid confrontation with the other party, it can also become an insurmountable barrier to the other party's understanding of their interests and needs. As Dias and Lopes (2020), Dias (2021), and Santos and Dias (2024a) note, information asymmetry, emotions, stereotypes, and

several communication constraints influence negotiation processes. This is why studying communication channels within conflict resolution, especially when conducted through legal representatives, is relevant for better understanding negotiation processes.

This case study focuses on an ongoing family law negotiation that developed from a judicial dispute concerning the recognition and dissolution of a common-law marriage and the division of assets. Although the parties in this family law case dispute several assets and legal issues, the dispute has focused on only one: a residential apartment that one party is gradually losing to the other. During negotiations over this asset, the parties initially focused on a purely distributive conflict over 100% ownership of the apartment, with one party demanding full ownership and the other rejecting the demand.

The negotiation Type, following Dias (2020) is depicted in the following Figure 1:



Source: Dias (2020). Reprinted under permission.

2 THEORETICAL FRAMEWORK

The case examined here has great value for our research and for lawyers, conciliators, and other individuals dealing with conflict and negotiation to reach agreement. We have seen how many conflicts can be resolved when the parties change their view of the problem and the issue in dispute, explore different solutions, and eventually find an agreed solution that is even better than what either could have

obtained in court. Negotiation is studied in several fields to analyze interactions between two or more interdependent parties to resolve conflicts, allocate resources, and create value. Early research on negotiation (Pruitt, 1981; Rubin & Brown, 1975) focused on the characteristics of the parties' decision-making processes, as well as their perceptions and the communication processes that took place during the interaction. It highlighted the main limit of traditional bargaining: negotiators restrict themselves to the parties' positions without questioning the underlying interests (Fisher & Ury, 1981). Parties' positions are the explicit demands they present to each other during negotiations. Underlying interests are the parties' needs, concerns, fears, and aspirations that explain their positions.

As mentioned earlier, the negotiation literature frequently refers to distributive versus integrative negotiation. The first of these is typical of a conflict over a sum of money or other resources, while the second type of negotiation seeks to create value that can then be distributed between the parties (Dias, 2020c; Lax & Sebenius, 1986). Such negotiation therefore focuses on several aspects to create sufficient value, and each party attempts to claim as much of it as possible. Raiffa *et al.* (2002) support this approach, noting that collaborative decision-making involves each party searching for alternative solutions and assessing them by how well they meet their interests.

Negotiation can create value, especially in complex situations involving many interests and assets. In family disputes, property is not only of financial value but also of interest to people other than the parties to the dispute. For example, children of either party, family members of either party, future spouses, other relatives, and even business associates of one or both parties may have an interest in the property in dispute. Thus, what seems impossible within a strictly positional view of negotiation can become possible when parties focus on the functions the disputed assets perform for the parties and search for alternative ways to guarantee those functions for all parties involved. As Fisher and Ury (1981) pointed out, this search for options for mutual gain is at the heart of negotiation.

The concept of alternatives to agreement is also a key element in negotiation processes. Introduced by Fisher and Ury (1981) as the Best Alternative to a Negotiated Agreement (BATNA), this concept has since been thoroughly studied. From a strategic perspective, the bargainer's alternatives to agreement significantly affect their negotiation power and decision-making (Fisher and Ury, 1981; Raiffa *et al.*, 2002). For

this reason, assessing realistic alternatives is a key factor that influences negotiation quality by limiting the effects of irrational expectations and emotions (Dias, 2020c).

The area of possible agreement, ZOPA, is the set of all possible agreements between the two parties involved in negotiations. A negotiation is possible if a ZOPA exists and each party has a Best Alternative to a Negotiated Agreement (BATNA). To identify a ZOPA, one needs to know both parties' reservation prices. In some cases, parties may hide their reservation value to maintain as much control as possible in the negotiation process. In these cases, parties use information gathering, communication, and even inferences about the other party's interests to assess whether a ZOPA exists. In legal negotiation, this is more complicated because parties negotiate through their lawyers, who do not always communicate effectively with their clients (Salacuse, 2006).

As mentioned above, several approaches exist for structuring negotiation. In general, more structured approaches facilitate a more systematic exchange of information to achieve better results (Dias, 2020c). Studies on structured business negotiation also indicate that this approach improves the quality of negotiation communication, leads to more predictable results, and helps parties identify better solutions (Dias *et al.*, 2020). Finally, mapping the negotiation process also enables a better understanding of the strategic interactions developed throughout the process, the parties' interests, and the decisions taken (Dias *et al.*, 2020).

Finally, several studies developed by the researcher investigated the role of trust in a negotiation. In general, trust affects information sharing, negotiation parties' willingness to explore more solutions, and their perception of justice and fairness regarding the agreements reached. Regarding the issue at stake in this research, Santos and Dias (2024a, 2024b) stressed that trust is important in negotiations, and especially in virtual and/or mediated negotiations where communication barriers influence the behavior to be adopted in a negotiation and, consequently, the development of trust between the parties, as described by Dias and Lopes (2021), who agree that this kind of trust is transformative to decrease the conflict's intensity and to stimulate cooperation between the parties in conflict.

Emotions can have a large impact in any negotiation. Most negotiation literature treats negotiators as purely rational actors seeking the best possible outcome under the circumstances. But in reality, negotiators are not perfectly rational, logic-driven beings. They have emotions that can interfere with their search for optimal outcomes

and also affect how they make decisions (Bazerman & Moore, 1994; this special issue). In negotiation processes, several studies by Dias (2021) and Dias *et al.* (2026) highlighted the roles emotions can play. It is worth noting that some disputes – particularly family disputes – contain large elements of emotion. Therefore, it would be totally wrong for negotiators to attempt to ignore them (Dias, 2021).

When representatives negotiate on behalf of their principals, communication between the parties can become more complicated as several factors intervene. Beyond serving as messengers, negotiators function as strategists by analyzing, interpreting, and evaluating information; making recommendations; and deciding courses of action within the framework of the negotiation. In such cases, therefore, agents can distort or even hide information in negotiations between principals. Moreover, each representative may select and send information to the other party that supports their interests.

Dias (2020d) also studied other instances of negotiation and showed that, through third-party intervention, it is possible to bring parties to agreement. In turn, Dias *et al.* (2020, 2022, 2023, 2025, 2026) studied the communication strategies in buyer-seller negotiations, contractual disputes, disputes in government and healthcare negotiations, mediation processes, negotiation in acquisition processes, negotiation in construction projects, negotiation in retail environments, negotiation in supply chain management and in various situations of dispute resolution, concluding that all these instances of negotiation were developed effectively whenever the parties' negotiators identified the parties' interests. Similar findings were obtained by Dias and Navarro (2020) and by Valente and Dias (2023) in other empirical studies regarding negotia

Despite the extensive body of work on negotiations in a variety of contexts—both within and outside family litigation—research focusing specifically on issues associated with parties' communication in family property disputes conducted through legal representatives remains novel. Accordingly, this case study addresses the lack of empirical research on how communication structures affect interest identification and value creation in a highly judicialized family dispute.

In summary, this study is grounded in core concepts that combine legal negotiation with conflict management and interest-based negotiation. The empirical study is based on a specific case of family dispute, initially formulated in purely distributive terms, in relation to the ownership of a common asset, and then gradually transformed into a more comprehensive form of negotiation concerning property rights,

usage of property (usufruct), family interests and the variety of ways in which value can be created. This case thus contributes to the body of work investigating the interplay between negotiation processes and communication and the results obtained in negotiations.

3 METHODOLOGY

This article is based on a descriptive single-case-study. It uses negotiation theory, as well as current studies on negotiation processes, on trust, on communication, on mediation and on decision-making in negotiations (Dias 2020c, p. 12; Dias 2021, p. 21; Fisher & Ury 1981, p. 20; Lax & Sebenius 1986, p. 15; Saunders *et al.* 2009, p. 56; Yin 2004, p. 15). This article analyzes only the ongoing negotiation, not the agreement finally reached. Thus, the main purpose of this article is to present the negotiation processes of an ongoing dispute and to understand how issues are dealt with during negotiations.

The research uses a qualitative descriptive single-case-study design. The case-study method is particularly suitable for contemporary phenomena where the researcher has scant echo chambers and can always go back to participants for clarification. Hence, it is best for studying complex phenomena within their real-life context. Furthermore, negotiation processes are highly context-dependent and therefore ideal for case studies.

This research is descriptive in nature. The goal of this study is to describe how negotiation evolves within ongoing family litigation, and how families negotiate, communicate, and reach agreements through their lawyers. In this sense, the researcher aims to explain the negotiation process. Using a single case study within a qualitative research framework, the researcher attempts to describe how a negotiation initially based on positions transforms into interest-based problem-solving (Dias, 2020d). Furthermore, the researcher seeks to describe the Zone of Possible Agreement of a party whose interests and reservation points are unknown to the other party (Dias, 2020d).

The study is descriptive in that it clarifies the stages and interactions of a set of negotiations and explains them with reference to established theory. Rather than test hypotheses or verify observations against generalization, the study aims to present a

chronicle of events in sufficient detail for readers to make sense of them in light of relevant literature (Saunders *et al.*, 2009).

Data collection took the form of direct participation by the author as legal counsel to one of the parties involved in the dispute throughout the negotiation. To facilitate analysis, the author has made full use of the proposals, communications, strategic considerations relating to possible settlement, as well as all other information relevant to a complete description of the development of the negotiation and its end, in the form of (i) documents which form part of the negotiation (legal pleadings, negotiation proposals and communications between the attorneys of the parties involved in the dispute).

This research includes all relevant information about this case and continues to do so. Conversely, information considered sensitive to the case parties, which may cause harm or prejudice to them, has been deliberately omitted. Such omissions were required and still remain necessary in order to ensure the complete confidentiality of the case parties and continued secrecy of the judicial process.

4 RESULTS AND DISCUSSIONS

This The case arose from a judicial dispute over the recognition and dissolution of a common-law marriage. The negotiation covered several patrimonial claims by both parties but ultimately focused on the appropriation of a high-value residential apartment. In examining this negotiation process, we can identify the different moments through which the parties moved from claims based on rigid positions to exploring a variety of solutions that would create value for each party's interests.

From a purely negotiation perspective, this is a highly incompatible negotiation between two parties with very different positions on a number of issues. The claimant wants full ownership of the apartment, while the defendant contends he should not have to give up ownership of the property and wants a settlement that satisfies him. This appears to be a distributive negotiation over a fixed amount of value (Lax & Sebenius, 1986; Pruitt, 1981). From a negotiation perspective alone, therefore, there appears to be little scope for either party to seek and realize joint gains, as one party's increase would necessarily mean a decrease in the other party's award.

Moving on to the analysis of the negotiation under examination, the parties' positions do not always reveal all relevant aspects of the situation under consideration.

In the negotiation examined in this study, interest-based negotiation was used to separate the various dimensions of value and different aspects of ownership. As previously stated, even when ownership of a property is under dispute, the defendant may want to propose to the claimant different alternative sets of arrangements that take into account the various aspects of value as well as the various aspects of ownership (e.g. legal ownership, possession of the property, use of the property, future inheritance).

The first proposal contemplated allocating 60% of the ownership of the apartment to the claimant while keeping the defendant's other relevant interests intact. In this sense, the proposal would preserve the defendant's right to occupy the apartment and establish the rules for the future sale of the apartment as well as for the defendant's right of first refusal to purchase it. As noted above, searching for value in negotiation involves combining different issues rather than focusing only on distributive ones (Fisher & Ury, 1981; Lax & Sebenius, 1986).

In relation to an integrated problem-solving view, the second proposal is also an example of a value-creating negotiation. In the first proposal, legal ownership of the apartment would be transferred to the defendant; in the second proposal, however, the children of both parties would become owners of the apartment in equal shares. In addition, the claimant would acquire usufruct rights for a long period. Thus, the function of the ownership of the property is being separated from the economic content and the practical use that is being made of it. As mentioned before, this type of negotiation requires a complex negotiation strategy that allows for an integrated problem-solving view (Dias, 2020c).

With respect to value, the solution may meet several of the claimant's interests: the interest in housing, the interest in value, the interest in attachment, the interest in the children's stability, and the interest in recognition of the claims. Granting the children ownership of the apartment and a long-term usufruct would likely meet all of the claimant's interests without requiring either party to abandon their legal position. Raiffa *et al.* (2002) note that, to reach a satisfactory agreement, parties must seek solutions that meet the other party's interests.

In the present case, both the claimant and the defendant considered the principal alternative to be continuing the litigation to obtain a judicial decision on the principal issues in dispute. However, in legal disputes, the parties' BATNAs are uncertain. It is unclear how long the litigation will last, how much it will cost, or what the

judicial decision will be. Consequently, although both the claimant and the defendant were insisting on their initial positions, both of them were aware of the uncertainties involved in the process of judicial resolution of the principal issues under dispute, such as the commencement date of the parties' common-law marriage, the nature of some of the assets under dispute, and the patrimonial consequences that might derive from such characterization.

This is also relevant when evaluating the parties' BATNAs. While the claimant wants full ownership of the apartment, her BATNA is not to obtain ownership of the apartment. Rather, her best alternative is to return to litigation, where the outcome is uncertain. Likewise, while the defendant would prefer that the claimant not obtain ownership of the apartment, his best alternative is uncertainty as to the outcome of the parties' respective patrimonial entitlements in judicial proceedings. In both instances, it is necessary and helpful to the parties to understand the distinction between their positions and their respective BATNAs (Fisher & Ury, 1981; Raiffa *et al.*, 2002).

The same analysis applies to the Zone of Possible Agreement (ZOPA). The estimated Zone of Possible Agreement for this case corresponds to a range between the claimant's demand for the full ownership of the property valued at approximately BRL 1.3 million and her maximum patrimonial entitlement, assessed by the defendant at approximately BRL 1.5 million.

An agreement cannot be reached even within a ZOPA when negotiations fail. In this case, communication problems went beyond mere distributive conflict (Dias, 2021; Santos & Dias, 2024a). All communication occurred through the legal representatives of both parties. Hence, several filters stood between the parties' statements and their perceptions of them. So, what the parties' attorneys said, or rather what they meant by what they said, was perceived by the parties in a different manner, which prevented both parties from reaching their interests.

The claimant's representative showed significant resistance to the defendant's proposals. The claimant's representative and his client were advised not to make any counterproposals, preventing any collaborative problem-solving. Furthermore, as already mentioned, there were times in which the claimant and her representative expressed frustration and even hostility towards the defendant, behavior that can lead to decreased information sharing, to increased levels of distrust, and even to a more competitive type of negotiation, in which both parties' interests are not taken into account (Bazerman & Moore, 1994; Dias *et al.*, 2026).

In summary, the main aspect lacking throughout the case was a proper exploration of the claimant's interests. Despite the offer of several alternative proposals to accommodate the defendant's needs, the claimant's interests and demands continued to form the framework of the negotiations. Instead of reaching a mutually acceptable agreement, the parties remained entrenched in their respective positions, as they had throughout the legal proceedings. Needless to say, the existence of several mutually acceptable options does not guarantee an agreement; rather, it depends on identifying and negotiating them within a meaningful dialogue between the parties.

As stated previously (Dias, 2023b; Martins & Dias, 2026; Oliveira *et al.*, 2025; Valente & Dias, 2023) the strategy of creating options to create value is also very relevant in this case study, since by analyzing and shifting the focus from positions to interests, the parties were able to identify different functions performed by the same asset (apartment) and, consequently, a larger set of alternative solutions to be proposed and discussed.

Research shows that mediation or structured settlement conferences (with or without lawyers) can improve communication and reduce adversarial dynamics, facilitating the identification of the parties' interests and functions (Dias 2020d; Dias *et al.* 2023). Therefore, even in a low-trust environment like the one presented in the case at hand, including a mediator or a structured settlement conference might provide a framework that facilitates parties' interest identification, exploration, and satisfaction of their respective functions.

Finally, the case under analysis will also contribute to the increasing body of research concerning negotiation in family disputes. These disputes differ significantly from most commercial disputes because they involve family relationships and interests. Moreover, in family disputes, the interests at stake go far beyond financial interests and relate to security, identity, family, the future, etc. Therefore, as other authors have noted (Dias, 2021; Dias *et al.*, 2026), negotiators, legal representatives, mediators, and others involved in the process must address the interests and functions at stake in family disputes.

5 CONCLUSION

The analysis of the parties' negotiation process revealed that the most important moment for both was when they began searching for alternative solutions to the apartment's ownership. That is, instead of treating the apartment as an asset to be distributed between them, the parties explored their interests in terms of the different functions the apartment served for each of them, such as housing, family, heritage, and assets. Thus, the finding supports previous research that value is created when parties to a conflict or dispute seek solutions that consider the parties' various interests to satisfy each of them (Dias, 2020c; Fisher & Ury, 1981; Lax & Sebenius, 1986).

An analysis of the family's aspirations, BATNA, and estimated Zone of Possible Agreement (ZOPA) showed that while both parties had continued litigation as their worst-case alternative, their aspirations differed significantly. Neither party had any real knowledge of the eventual judicial outcome; therefore, the only sensible course of action was to continue negotiating in an attempt to reach a mutually acceptable solution within their estimated ZOPA.

A further important consideration within the case under examination relates to the nature of the communication between the parties. Because negotiation focuses on the parties' interests, achieving a successful agreement requires identifying those interests. However, as in this study, when parties are engaged in a dispute and communicate through their lawyers, identifying the parties' interests can be particularly difficult. In such instances, despite the parties' wish to negotiate a settlement, effective communication does not take place, which leads to an impediment in the exchange of information between the parties and the lawyers, necessary for them to clarify their priorities, evaluate options, and negotiate a solution.

This case study contributes to the field by showing how negotiation can be applied to a family dispute still in progress. Even though the dispute is being conducted through lawyers, as has often been the case in family law disputes, the researcher can apply principles of negotiation to reveal how interest-based negotiation is being developed into value-based negotiation, and by showing how a greater understanding of interests, communication, and value creation is necessary in addition to legal knowledge in family law negotiation.

6 FUTURE RESEARCH

Finally, future research could examine how negotiation communication is affected by different structures, for example, when parties negotiate alone, through lawyers, through a mediator, or through a combination of these. This type of research could be particularly relevant for developing negotiation theory, as well as for the practical implementation of dispute resolution in various contexts.

Effectively negotiating often means moving beyond the parties' positions to examine the underlying reasons and interests that must be satisfied. In family disputes involving not only legal and financial interests, but also deeply emotional and often enduring relationships, negotiations can easily get caught up in conflict. However, for effective problem-solving and reaching a mutually satisfactory solution, these same interests can become the basis for agreement and asset division.

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