



Class 4

Alternative Dispute Resolution

General Points about Negotiation

- Most (but not all) negotiations are distributive; i.e., it's a “zero sum game.”
- Don't negotiate against yourself:
 - Don't make a second offer until you receive a counter-offer.
 - Don't be afraid to make a lowball offer unless it's insulting.
- Threatening rarely works and personal insults never work.
- Don't exaggerate or make a claim unless you can back up your claim. Other parties will demand proof of every claim before final settlement is reached.
- Get a “range” of acceptability from the client BEFORE starting a serious negotiation round.
- All offers must be communicated to the client (unless the client has made it clear that s/he will not accept a particular number).

Where to Establish a Baseline for Settlement Negotiations

- Factors to take into account when determining what to offer or to accept must include:
 1. The party's "BANTA"
 - This is, in essence, the best the party could hope for realistically if the case is not settled (including costs of time, attorneys' fees, etc.)
 - This is a good starting point for negotiations.
 2. What the other side can realistically afford to pay (or settle for).
 3. What offer is likely to insult the other party into pressing for litigation.

Gaining Leverage in Negotiation Process

- To improve your negotiating position, you can:
 1. Prepare an impressive draft motion for summary judgment or something to that effect to convince your adversary that he or she will have a tough road to hoe in competing with your firm.
 2. Obtain a temporary restraining order preventing the other party from undertaking actions in dispute.
 3. Move to attach assets belonging to the other party pending the outcome of the trial.
 4. Move for costs and sanctions against the other party (if there is a legitimate ground for doing so).



QUIZ TIME!