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Negotiation: A Guide to Practical Skills

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BOOK REVIEW

Negotiation: a Guide to Practical Skills

NADJA M SPEGEL, BERNADETTE ROGERS AND
ROSSPBUCKLEY, NEGOTIATION — THEORY AND TECHNIQUES,
SYDNEY, BUTTERWORTHS, 1998, PAGES 1-212.
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Astor and Chinkin define negotiation as “where two or more people together attempt to reach agreement on some matter”.¹ It follows that negotiation is central to daily life, be it in the supermarket, at school, in traffic, at home, or in the work-place. Even though negotiation is common place and practised widely (and often unwittingly) by lay people, over the last two decades negotiation has been professionalised. “Negotiation” has developed into a term of art; it is now a “process”² with discrete areas of theory and practice.

Although negotiation is widely practised in traditional forms of dispute resolution, such as the court system, it also forms the cornerstone of the alternative dispute resolution (ADR) movement. As lawyers are the main players in both traditional and alternate dispute resolution processes, focused and skilled negotiation, as never before, constitutes an indispensable part of legal practice.

This book by Spegel, Rogers and Buckley comprises the fourth part of the award winning Butterworths Skills Series. As the title indicates, the book’s aim is to integrate the theoretical and practical aspects of negotiation, forming a comprehensive resource for law students and lawyers. Nevertheless, the authors’ primary commitment is to skills-based learning (ix); the theoretical underpinnings of negotiation appear secondary. For example, the

authors proffer the Fisher and Ury model³ of “principled” negotiation (22), and do not explore any other theoretical perspective of negotiation. Furthermore, the book fails to consider tensions that are inherent in negotiation,⁴ such as those existing between empathy and assertiveness, and there is little discussion of issues concerning interpersonal relationships and interdependence. Although these comments may appear to be a negative criticism of the book, they are not a criticism of the quality of the substantive work. Rather, they illustrate that the book’s title is somewhat misleading.

The work will succeed at a practical, if not theoretical, level. Law teachers, students and practitioners will find the work useful as a manual; its comprehensive index and plethora of tables, flow charts, figures and diagrams reinforcing the text. The book satisfies the needs of those who learn best by visual aids and representations. A range of practice-oriented facets of the negotiation process are addressed in detail, such as the preparatory regime, communication techniques, identification of negotiation styles and maximisation of empowerment strategies.

The ten chapters of the work divide evenly into two major parts. Chapters one to five concentrate on the process of negotiation. The preparatory stage, various negotiator strategies and, interestingly, confronting ethical issues are all covered in detail. The last five chapters comprise the “how to” or skills section.

The book is written in reader-friendly, “plain English” and in an almost conversational tone. It is well set out throughout. The authors seem to ascribe to the KIS principle — Keep It Simple. For example, they explain the difference between positions and interests as follows. “A position is what you want. An interest is why you want it”. (22) Good use is made of bulleted points to summarise advantages and disadvantages. For instance, the advantages and disadvantages of interest-based bargaining are listed clearly and concisely. (30)

Interspersed throughout the text are “activities”: practice-oriented exercises that provide either a useful learning and/or teaching regime, or food for thought and self-evaluation for the practitioner. A consistent formula assists the reader in using the book as a teaching and reference tool despite the authors’ caveat that the work is “not a reference book”. (ix) On the first page of each chapter is an inset containing an overview of the major

sections. A cogent (and often amusing) quotation and illustration are also presented at the start of each chapter. A summary of major concepts canvassed in the chapter, a list of further readings, and a “mind map” depicted by a flow chart that chronicles the thought-processes, interests, and goals associated with the central concept discussed in the chapter feature at the end of every chapter.

The last chapter describes and analyses the emerging body of black letter law in Australia relating to negotiation. The authors summarise the law relating to “without prejudice” discussions, pre-contractual negotiating, and party liability for conduct during negotiation (including puffery, false statements and misleading and deceptive conduct). Provisions contained in the *Trade Practices Act 1974* (Cth) and comparable state legislation are considered.

The appendix at the end of the work consists of three role play exercises that focus on developing skills in option generating. The exercises are a valuable resource for law teachers in a skills-based course. They can be used as the subject of peer review or can comprise part of the assessment criteria in a university subject.

The book’s target market is both law students and the legal profession. Oddly, the authors assert that, despite negotiation being an important component of legal practice, it does not form part of the curriculum at Australian law schools. While this may have been true in the past, this is clearly not the case in the 1990s. Many law schools teach courses at undergraduate and post graduate level which address the whole spectrum of ADR processes.

In this work the authors make an important contribution to the teaching and practice of negotiation. The readability, excellent layout and plethora and variety of high quality assessment tools contained in the book will ensure that “Negotiation — Theory and Techniques” establishes itself as an essential resource for practitioners, teachers and students of ADR.

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¹ H Astor and C Chinkin, *Dispute Resolution in Australia* (Sydney: Butterworths, 1992) 77.

² For example, see L Boulle, *Mediation: Principles, Process, Practice* (Sydney: Butterworths, 1996) 46.

³ See R Fisher and W Ury, *Getting to Yes: Negotiating An Agreement Without Giving In* 2nd ed (London: Century Business, 1991).

⁴ See R Mnookin, S Peppet and A Tulumello, The Tension Between Empathy and Assertiveness (1996) 12 *Negotiation Journal* 217.