

## Focus Questions for The Leader's Guide To Negotiation

These focus questions are intended to aid you in the active reading of Simon Horton's "The Leader's Guide To Negotiation: How To Use Soft Skills To Get Hard Results," one of the books selected by the faculty of the Syracuse University College of Law to help prepare you for your time studying law. This book was chosen by the Professor Elizabeth August.

The questions are written with the intention of helping you. You won't be tested on your answers and you can feel free to read the book without them should you choose. And there aren't any correct answers for these questions. It's more important to question the text and reflect on what the answers might be than to seek for a definitive "correct" answer.

The questions are designed to model the process of active reading, which is a skill with which you should already be familiar. Active reading is a crucial skill for doing well in law school, and the more adept you become at it before you come to school, the better you will do during your time here. If you would like to learn more about active reading, there will be content discussing the topic in more depth on the Legal Writer's Toolkit site.

You shouldn't assume that these questions indicate a point of view or that they're trying to steer you to answer them in a particular way. Rather, they're intended to provoke you to think critically about what you read and to help you form your own conclusions, based on the information the author gives you about the topics discussed in the book.

We hope you enjoy The Leader's Guide To Negotiation, and we look forward to meeting you and working with you over the course of the next few years.

## INTRODUCTION

1. The author says that negotiation is not very important and that the most important part of the process in which negotiation plays a small role is implementation. Had you considered this?
2. The author writes this book from the context of leadership. In a negotiation conducted by a lawyer on behalf of a client, who is the leader? If it is not the lawyer, will this book still have valuable insights for lawyers?
3. The author describes the “Arm Game.” Before reading how some participants solved the problem posed by the game, what would your solution have been? Do you think a win-win solution is possible in all negotiations? Will you revisit your answers to these questions after reading the rest of the book?

## THE STRONG WIN-WIN PRINCIPLES

1. The author notes that details can sometimes get in the way of the final results. And sometimes the last \$500 (to Americanize the author’s use of currency) can stand in the way of finalizing a divorce settlement. But what if the amount is \$5,000? \$50,000? At what point does the amount of the difference become a more significant detail?
2. The author describes a typical haggle, or positional bargaining, situation. Have you engaged in this sort of bargain? Did you enjoy the process? Were you satisfied with the result? Do you feel yourself to be a good haggler?
3. One cynical definition of successful negotiation is that it’s a process that leaves neither side happy. Was that how you felt after you haggled? Do you think the other side felt the same way?
4. The author’s description of an interest-based negotiation might be a little idealized, but do you see how a successful interest-based approach can produce a win-win result? And do you see why this is a better result than a win-lose result?
5. The author describes a hypothetical situation in which one large corporation might offer help to a competitor to encourage it to enter into a field, thereby creating business opportunities. Do you see how this can be beneficial to both parties? Do you also see how this strategy can backfire and go very badly for the helping corporation?
6. Had you considered the idea that being fair can also satisfy selfish goals? And will you ever be rude to a waiter again?

7. Do you think of yourself as naturally assertive or naturally passive? Do you see why the author draws a distinction between assertive and aggressive behavior?

## **YOUR WIN**

1. The author stresses the importance of looking at the outcome of negotiation from the perspective of both participants. Do you see why it is important to understand the other side's position as well as your own?

2. The author writes as if you will be negotiating on behalf of yourself. If you are negotiating for a client, though, do you see why you will need to participate in a pre-negotiation discussion with your client to make sure that you understand your client's action points and will negotiate with them in mind?

3. Are you surprised to read that your client might tell you things that might not be correct? Does this mean that your client is lying to you, or might it mean that your client knows less about its business than it thinks it does?

4. Throughout this chapter the author has emphasized the importance of research. Do you see why research is such an important part of negotiation? Had you appreciated the importance of research in negotiation?

## **THEIR WIN**

1. The author talks about the importance of understanding the other party in negotiations. In the negotiations you've conducted in your life, have you done this kind of research? Or did you assume you were correct about the other side's motivations? Having read this chapter, do you still think you were correct, or might you have misunderstood what the other side was looking for?

2. The author talks about there being very good reasons people should agree to do something and then there is the real reason. Do you see why uncovering the "real" reason that motivates someone to reach an agreement might be different in the legal and business contexts? Often, personal motivations come into play in the negotiations lawyers must conduct and they can make lawyer's negotiations more difficult than business negotiations. Do you see why research into those personal motivations might be more difficult than in the business context?

3. The author says that "deep down" people are very superficial. Do you agree?

4. The author talks of the importance of inspiration in some deals, and uses the example of the Northern Ireland peace process. How important is inspiration when the goals of the negotiations are more commonplace and less historic?

5. The author stresses that despite all your research, you might come to a negotiation and realize that your conclusions about the other side's motivations are wrong. Do you see why the author quotes Eisenhower in this context: "plans are useless but planning [is] indispensable."

## **MULTI-PARTY NEGOTIATIONS**

1. The author writes that complexity creates opportunity. Had you considered this idea before? Do you see why it's true?

2. The author describes situations in which multiple individuals or groups might have an interest in the outcome of a negotiation, and later describes the importance of identifying these various interested parties. Do you see why this is important and why it can also be difficult?

3. Have you ever mapped out the different parties with an interest in a negotiation? Do you map out relationships in other areas in an attempt to understand the various competing interests in play? Do you think you will do this to help you prepare for your negotiations in the future?

4. Had you considered the need to get someone other than the party you're negotiating with to agree to a deal? Is this why car salesmen take a proposed deal back to the office manager to sign off? Have you experienced that tactic, and found that the deal you thought was settled was being modified? If so, how did you respond?

## **PREPARING YOURSELF**

1. Have you given much thought to cognitive bias until now? Do you think you suffer from any cognitive biases? Do you think everyone is affected by cognitive bias or is it a phenomenon restricted to a group of people?

2. The author writes of being in "the right frame of mind," when you feel you can do anything. Have you experienced this situation? Often? Do you know what brings on that sensation for you? Can you summon it at will or is it something that just happens sometimes?

3. The author seems to say that we can will ourselves to change our personality to be the appropriate character to meet a situation. Have you considered this as a possibility? Have you taken this approach in your own life?

## **DEVELOP YOUR PLAN B**

1. Have you been involved in a negotiation where it became clear that you should walk away? Were you able to do it? Has someone ever walked away on a deal with you? How did you react?
2. The concept of a Best Alternative To Negotiated Agreement is central to all forms of negotiation. Have you considered this idea before? When you have entered into negotiations for something - anything - have you considered your BATNA or have you begun negotiations without considering what would happen if you do not achieve a satisfactory result?
3. The author reminds us that when considering the best and worst alternatives to a negotiated agreement, we have to consider our personalities (or, presumably, the personality of the person on whose behalf we are negotiating). If we are negotiating as lawyers, for example, does our client not want to see the inside of a courtroom, or is the client spoiling for a fight, even though it might be costly? Do you see how these different personality traits can have a significant impact on our negotiating strategy?
4. The author writes that you should always warn the other side in negotiations that you are preparing to walk away. Do you see why this is good advice?

## **RAPPORT**

1. Had you considered the author's claim that if your negotiating counterparty likes you, you are likely to get a better deal? Had you considered the other possibility; that if you like your counterparty, you might be willing to give the other side a better deal?
2. The author writes of the mutual affinity that can occur between two people who have shared personal, political, or professional interests. Have you experienced this? What if you had to negotiate with someone who is your polar opposite? Will you seek some common point to try to forge a personal connection or will you try some other negotiating strategy?
3. Are you surprised that the author advises building rapport with your negotiating counterpart even in business deals? Do you see that all deals - even complex business deals like the one described by the author between Eastman Kodak and IBM - are negotiated by people on both sides and that the chances of success are better when both sides have rapport?

## CREDIBILITY

1. The author introduces the concept of credibility with a short discussion of the negotiations that take place between cinema chains and film distributors. The same points could be made, though, by looking at sports agents and professional sports teams or lawyers negotiating settlements in litigation. Do you see why credibility is so important and why it is difficult to secure a favorable negotiated settlement without it?
2. In the previous chapter, the author wrote of the importance of informality and rapport. Now the author writes of the importance of perceived authority and recommends you dress smartly and carry an impressive bag. Does this advice appear to be contradictory? How often do you dress in what the author describes as “the trappings of authority?” Do you think it might be a good idea to practice dressing this way before engaging in a negotiation?
3. The author describes some of the attributes of confident body language. Have you considered your own body language and the messages you send to others by your posture, your voice, and your gestures? The author wrote of self-deprecation in the previous chapter and emphasized how useful it can be in establishing rapport. Do you think it’s possible to display confident body language and still be self-deprecating? Do you see how this could be a useful combination for a negotiator?

## RAPPORT VS CREDIBILITY

1. The author writes that negotiators must understand their natural tendencies and draw a distinction between someone who tries to please and someone who tends to come across more sternly. Which do you think more closely describes your natural tendency? How will this self-knowledge inform your approach to negotiations?
2. It is very difficult to evaluate oneself using the criteria the author identifies on page 103 - voice, pace and energy, hand, and so on. But these qualities are very noticeable by others. Will you ask someone to evaluate you using these criteria? As the author notes, this can be a scary experience.
3. The author writes that we can boost rapport by conforming our body language more to those behaviors listed in the left-hand column of the chart and boost our credibility by behaving more as the right-hand column describes. Had you considered that acting as a negotiator might involve such attention to body posture and gesture?

## **INCREASING YOUR POWER**

1. Have you ever considered breaking down the bases of power as the author does here? Do you see how thinking of power in this way can strengthen your negotiating position?
2. Many of the techniques the author describes in this chapter seem better suited to large, complex deals. But the power inherent in the ability and willingness to walk away from a bad deal is important for all deals, big and small. Do you see why the author emphasizes the importance of walking away from a deal?
3. The author writes about the SWOT analysis. Have you heard of this approach before? Do you see why it is a useful exercise, both to understand your position in a negotiation and to understand the motivation of the other side?

## **TURN THEM INTO A WIN-WIN FANATIC**

1. In this chapter, the author reveals what he calls “a secret of the universe:” “the large majority of people respond in kind to your behavior.” Was this a surprise to you, or had you already recognized, implicitly or explicitly, that this is how people behave? If you had not realized this, will you observe the way people respond to you in order to test this theory?
2. Of course, if the author is correct about the way people respond to you, it’s likely that the reverse is true as well: you will respond in kind to the way people behave towards you. Knowing this, will you observe the way you respond to people and try to change the way you behave if you feel they are leading you to be unproductive?
3. The author describes several experiments related to trust and honesty. Assuming that you won’t be able to “bring a dog and hold hands while you say prayers at the beginning of the meeting” as the author jokingly suggests, do you think there are nonetheless ways to incorporate the results of these studies into your negotiation strategies?

## **CHANNEL THEIR SELF-INTEREST**

1. At the start of this chapter, the author notes that “ideas do not succeed on the basis of their quality but on the basis of how well they are put across.” If this is so, do you see why this simple statement is simultaneously disturbing and encouraging for lawyers generally, not just those engaged in negotiation?
2. The author writes of the value of asking questions. Most people think negotiations are situations in which each side makes statements about its own position, but, if you think back to negotiations in which you have participated, you likely will remember that you were asked many questions during the process. Does this change the way you think of the negotiation process?
3. The author writes of three different types of people involved in group negotiations: the leader, the advisor, and the barometer. And he writes about different approaches to all of them in order to reach your ultimate goal. Had you thought of negotiation as being this complicated, with at least three different people to observe and persuade? Does this sound daunting? Or do you think you already know a great deal about how to do this naturally?

## **DEALING WITH DIFFICULT PEOPLE**

1. Have you considered what your natural response is when confronted by a negative situation? Do you tend to fight back, give in, or walk away? Do you see why it is important to understand your own natural response and to control for it when you are engaged in a negotiation?
2. The author writes of experienced negotiators and the technique they use when confronted with difficult people on the other side of the table. These are useful examples, but it’s important to remember that these are techniques used by experienced negotiators with years of practice behind them. How much experience do you have in negotiations? If you don’t have that much, then remember that these confrontations can be difficult, and remember also that the person on the other side of the table might be staging a confrontation to test you.
3. The author suggests several ways in which a negotiator might respond to an aggressive counterparty. How easy do you think it will be to deploy these techniques in the heart of a negotiation session? Do you see why it is important to have a strong understanding of your position and that of your counterparty before the negotiation begins?



## **PROBLEM SOLVING**

1. The author stresses several times that negotiations are not linear and that there is no set pattern to them. Does this surprise you? Did you think that all, or most, negotiations followed the same basic framework?
2. The author discusses a situation where a company's client demanded a contract renegotiation with a 20 percent cost reduction, but then worked with the company to help it find ways to reduce its costs. This was a win-win because the company was able to take the lessons it learned about cost reductions to make itself more competitive in other negotiations. Had you considered that a company forced to give up 20 percent of what it expected to gain on a contract might consider the result a win? Do you see how that result was possible?
3. Are you surprised to read of negotiations as a creative process? Did you assume that problems would have one solution and that once that was identified the negotiations would resolve quickly? Do you see the benefit in looking to find other solutions beyond the obvious ones?

## **COMMUNICATION**

1. The points the author makes about communications are crucially important to all lawyers, not just those engaged in negotiations. Do you see why the author says that both parties are 100 percent responsible for ensuring the success of communication?
2. Have you ever experienced a situation where you thought you had explained yourself clearly but the person you were speaking to either didn't understand or misunderstood what you were saying? What did you do in that situation? Did you consider why the miscommunication had occurred?
3. The author stresses listening as a key part of communication. Have you considered the importance of listening carefully? Do you consider yourself to be a good listener? If so, are you disturbed to read that we are generally poor at listening?
4. Can you see that much of what the author says about listening - both good listening and bad listening - can be applied equally well to reading? Active reading - the kind you are engaged in when you question the text and seek out the answers to your questions in the text - takes a lot of energy, but the rewards can be significant.

5. The author writes of the Questioning Funnel. Without knowing this name for it, is the technique familiar to you? Have you used it before? This technique is crucial to all lawyers, either when finding out information from their clients or when asking questions at depositions, or in a number of other situations. Do you see why it is so helpful at getting information?

6. The author points out that even though we ask questions and get answers to them, we might not get the information we need. Have you ever experienced this? Do you see how the techniques the author suggests for digging more deeply into a subject can help counter the tendency to accept a truthful, but misleading, answer to a question?

## **DEADLOCK**

1. Have you participated in negotiations that reached deadlock? Did you overcome the deadlock or did the negotiations break down? If you overcame the deadlock, how did you do it?

2. The author has emphasized the importance of nailing down the specifics of a deal several times throughout this book. Do you see why this is an important concept, especially in the context of breaking deadlocks?

3. Many times in this book the author uses humor. In this chapter he notes that one creative way of breaking a deadlock could be if one side in a negotiation offered him credit at their furniture business or car dealership. "Better still, a brewery." The author doesn't need these humorous asides, which happen almost in every chapter, to make his point. So why does he include them? Is he modelling a way of establishing rapport? Is he trying to establish a relationship with you, his reader, by establishing his written persona as a friendly, humorous, character? Does this help him to establish credibility? Had you noticed him using this technique? Was it effective?

4. The author writes of changing the dynamic of a stand-off by doing things like telling a joke or by talking about the news or sports. But what if you're not comfortable telling jokes, you and your counter-negotiator hold different views on the news, and you don't follow sports? Are there areas of conversation you think you might be able to share at moments of deadlock? Or is this technique not for you?

## CONCESSIONS

1. We all respond to making concessions differently. Are you someone who concedes easily, or do you find making concessions difficult?
2. Again, the author stresses the importance of a linguistic construction in negotiations, this time the phrase “what if . . .?” Had you considered the importance of language in the way negotiations are conducted? Do you see the power lurking behind those two simple words “what if . . .?”
3. The author writes of the value of letting the other side in negotiations come up with your ideas or, in the alternative, coming up with the other side’s ideas. The author has used a similar technique previously, quoting Harry Truman as saying that it’s amazing how much you can accomplish if you don’t take credit for the accomplishment. Have you used this technique yourself? If not, do you think it will be easy or difficult for you to set ego aside in order to reach an agreement?

## DEALING WITH DIRTY TRICKS

1. Was the author correct in his prediction? Were you looking forward to a chapter that would tell you how to practice dirty tricks during a negotiation? Will you heed the author’s advice to not engage in these practices?
2. How does the pulling of tricks such as the ones described here comport with the idea of achieving a win-win result? Aren’t tricks a way of making the other side lose, even if just a little?
3. The author writes of people who slip in a new clause or undiscussed changes into contracts. You might not believe that such things happen, but they do. Do you see why companies hire lawyers to protect them against such practices? Do you see why lawyers must be careful and methodical when reviewing agreements between parties?

## **SEEK TO TRUST**

1. Are you inherently a trusting or non-trusting person? Does that character trait extend into negotiations and deals you have been involved in? Do you believe yourself to be a good judge of character? Does this make it easier or more difficult to trust people?
2. The author writes that trust is cultural and contextual. Had you thought of trust in those terms before? Had you considered that lawyers are inherently untrusting by nature? Does this mean that lawyers are also untrustworthy? The author writes that older people are more trustworthy, that women are more trustworthy than men, and that people are more trustworthy towards women. Has this been your experience? Do you agree with the studies that support these conclusions? If so, why? If not, why not?

## **HOW TO TELL IF YOU CAN TRUST THEM**

1. The author stresses preparation as an important aspect of gauging if you can trust another party in negotiations. The author has stressed the importance of preparation many times before. Had you considered the importance of preparation in negotiation before? Had you considered how much work would be involved in preparing to negotiate?
2. The author suggests - not necessarily flippantly - that you might consider dropping your pen and seeing if the other party picks it up for you. Is this a technique you think actually will reveal the trustworthiness of your counterparty? Had you heard that this is a technique sometimes used by interviewers looking to decide if they want to hire someone? The author suggests other tests of trustworthiness. Do you think you will attempt such tests in your negotiations? Will you recognize them when someone attempts to test you? If someone drops a pen during your negotiations or at a job interview, will you pick it up? Will that act disclose your trustworthiness to the counterparty?
3. Do you often read body language? Do you feel that you're skilled at reading other people from their body movements or do you consider yourself inexperienced and easily deceived by the way people behave when discussing something? Will you think about some of the things the author writes about here and consider practicing to improve your skills at reading body language?

## **INCREASING THEIR TRUSTWORTHINESS**

1. Another theme that recurs time and again in this book is the importance of the word “specifically.” Do you see why “specifically” is such an important concept, particularly in the context of closing a deal?
2. In the example in the “Be Clear” subsection, the author describes how years of conflict resulted from the difference between the English and French versions of a document, and in particular the absence from the English version of the definite article “the.” There are many examples of deals being interpreted differently based on the presence or absence of article, the use or non-use of the Oxford comma, and other seemingly small additions or exclusions in the document. Do you see why lawyers must be detail sensitive and be able to identify potential problems caused by the presence, or absence, or short words like “a” or “the” or even of punctuation marks like a comma?
3. The author describes the “Tit-for-Tat” approach to negotiation. Is this a strategy you will feel comfortable using? If so, was any of the information imparted in the rest of this book worthwhile? Is this a strategy for all negotiations or one to be used in particular situations?

## **WHAT TO DO IF YOU REALLY CANNOT TRUST THEM AT ALL**

1. The author writes about the activities of Joel Brand and Rudolf Kasztner during the war, and the ways in which they sought to negotiate with Nazis in an attempt to save the lives of Jews. This represents perhaps the most extreme example of seeking a win-win result imaginable, and certainly it isn’t a situation in which we would ever hope to find ourselves in. But do you see how Brand and Kasztner sought to identify something they could provide the Nazis, and which they might want, in order to save as many lives as possible? Does this story suggest to you that win-win is a strategy that has some promise for our own, hopefully more mundane, negotiations?