



Never Split the Difference: Negotiating Contracts


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Introduction

The idea that no deal can be fair if it wasn't reached by way of compromise has been drilled into our heads since elementary school. The philosophy of compromise is often linked to the principles of equality and fairness. Compromise is well-intentioned and thought to award equal consideration to both parties—so why does it rarely turn out how we intended?

Contrary to popular belief, strong relationships and agreements aren't built on compromise. In fact, compromise can be counterproductive to the negotiation goals of both parties and devastating to the underlying relationship. In contract negotiations, it's common to feel compelled to compromise in order to gain buy-in or land a big account, but doing so will have long-term consequences that outweigh the immediate rewards.



“Compromise is well-intentioned and thought to award equal consideration to both parties—so why does it rarely turn out how we intended?”





Why Compromise Isn't
All It's Cracked up to Be

The truth is, there's no such thing as a “win-win” compromise. Although compromise is well-intentioned, the agreements it creates never quite hold up to expectations—or hold up, period. Trying to create an effective solution via compromise is like assembling build-it-yourself furniture with the wrong instructions—you can follow the directions perfectly and still end up with something that doesn't look or function like the table you thought you bought.

When we use compromise in an attempt to create a “fair” agreement, we make three dangerous assumptions right off the bat:

Assumption #1: Both Parties Have the Same Perceptions of Fairness and Value

In reality, our sense of fairness is incredibly subjective. There are no universal rules; what seems fair to one person may not appear so to the next. Our sense of what's just is informed by cultural norms, context, our environment, our value perceptions, and most of all, our emotions. To complicate things even further, the way we assess value is also subjective. Different people are bound to value things unequally. Though a compromise may appear equal on the surface, it's not guaranteed to be so in the eyes of both parties.

To understand how value perceptions affect the perceived fairness of a deal, imagine that two children are trading crayons in class. As an onlooker, you might assume that the most equitable agreement would be a one-to-one trade—one yellow crayon for one blue crayon. However fair this may seem on the surface, it doesn't account for the value perceptions of each child. For instance, the yellow crayon may be one child's favorite color, and therefore more valuable than all others in their eyes. The other child may need yellow in the moment to color in a sun, but they may also place similar value in yellow-toned crayons. When you tally up the value perceptions of each party and the emotions that are fueling them, it becomes evident that a one-to-one trade of the colors in question may not be the most effective solution.

Assumption #2: A Fair Deal is the Most Effective Deal

In reality, compromise breeds exceptionally nonsensical agreements. Rather than working toward a cohesive solution, a compromise takes one half of what one person wants and one half of what the other person wants and grafts them together into one misfit solution. The result is almost always ineffective, hard to implement, and universally frustrating.

Assumption #3: Fairness Will Result in Mutual Satisfaction

Nothing could be farther from the truth. In negotiations, it's quite possible to be happy with a superficially unequal deal and be completely devastated by a fair one. By attempting to influence your counterpart's perception rather than opening with the terms, you'll be able to earn buy-in and craft a stronger agreement.



In addition to these assumptions, compromise also banks on the fact that each person's net "wins" will cancel out the impact of their losses, thereby creating a "win-win" outcome. The problem? We naturally perceive our wins and losses unequally.

Behavioral psychologist Daniel Kahneman [won the Nobel Prize](#) for applying this seemingly illogical concept to the field of economics. In his groundbreaking study, "[Prospect Theory](#)," he found that Wall Street traders perceived their wins and losses as unequal, even when they were numerically equivalent. For instance, if a trader won \$500 and lost \$500, their behavior would be more affected by the loss, which they invariably saw as more significant than the win.

As Kahneman puts it in his [world-renowned study](#), "the aggravation 'that one experiences in losing a sum of money appears to be greater than the pleasure associated with gaining the same amount.'" To apply this theory to compromise, no matter how much you earn in a negotiation, you're inevitably forced to experience some degree of loss or risk—and that loss will emotionally overshadow the win. In short, compromise primes us for disappointment.



“Compromise banks on the fact that each person’s net ‘wins’ will cancel out the impact of their losses.”





Imagine a scenario where a husband and wife are arguing over whether to buy a real Christmas tree or a fake one. The wife likes the family ritual of cutting down a tree and is emotionally connected to the smell of real trees, which evokes fond memories of her childhood and bonding with her siblings. The husband feels that a real tree is too much of a hassle, too costly, and represents a potential fire hazard. For these reasons, he feels strongly about getting a fake tree that's safer and can be reused every year.

They compromise and decide to switch every other year, putting up a fake tree one year and getting a real tree the next. The problem with this compromise—and all compromises—is that it forces each party to live with their perceived loss half of the time. From the wife's perspective, she must sacrifice an essential part of what makes the holiday meaningful to her 50 percent of the time. From the husband's perspective, every time they use a real tree, he must live with the potential risk of fire as well as quantitative losses of time and money. Inevitably, the compromise will breed resentment and damage the very relationship it was intended to protect.



8:30 AM - Marketing System Meeting
1:45 PM - Review PPA User manual
John again to arrange meeting

Sydney
Flight

CASHBOOK

Pay Invoice

Card Type *

Name on card

Card number

Expiry date *

Zip / Postal code

Reaching an Agreement without Compromise: Negotiating Contracts

... product or ...
... brand. All the promotional material ...
... logo to communicate with your ...
... brand, listing a good reason why ...
... advantage in gaining a large ...
... from the product and services you ...
... other. The branding strategy you ...
... leads to a strong brand equity the ...
... branding strategy you have should ...
... be consistent ...

| Month | Jan-16 | Feb-16 | Mar-16 | Apr-16 | May-16 | Jun-16 | Jul-16 | Aug-16 | Sep-16 | Oct-16 | Nov-16 | Dec-16 | Total |
|----------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| Revenue | 10,000 | 12,000 | 15,000 | 18,000 | 20,000 | 22,000 | 25,000 | 28,000 | 30,000 | 32,000 | 35,000 | 38,000 | 300,000 |
| Expenses | 8,000 | 9,000 | 10,000 | 11,000 | 12,000 | 13,000 | 14,000 | 15,000 | 16,000 | 17,000 | 18,000 | 19,000 | 150,000 |
| Profit | 2,000 | 3,000 | 5,000 | 7,000 | 8,000 | 9,000 | 11,000 | 13,000 | 14,000 | 15,000 | 17,000 | 19,000 | 150,000 |

So how can two parties with different views reach an agreement without making concessions? By creating one coherent, viable, and mutually acceptable agreement, rather than cutting and pasting two conflicting ideas together into one.

If only one solution is possible, it's up to you to effectively influence the nature and terms of the agreement by [honing your business negotiation skills](#) and using the following Black Swan contract negotiation rules:

1. Avoid Using the Language of the Ego

When you present a solution as your idea versus their idea, right versus wrong, you create an antagonistic environment. In such an environment, no party can make a concession without sacrificing their autonomy or their integrity. Rather than presenting a solution at the beginning of a negotiation, focus on nurturing trust, fostering a collaborative environment, and gaining a more complete understanding of your counterpart's point of view. By asking [calibrated questions](#), you'll encourage your counterpart to talk, awarding them a sense of control and helping you learn what you need to gain their trust and [build influence](#).

2. Be Willing to Hear Your Counterpart out and Open to Learning from Their Ideas

If someone doesn't feel like they've had the chance to express themselves or doesn't feel like their opinion has been understood, they won't be able to process what you're saying or willing to say "yes." Rather than focusing on

what your next counterargument is going to be, listen [on multiple levels](#) with the goal of comprehension. If you listen effectively and [use labels](#) and calibrated questions to uncover your counterpart's core drives and perceptions, you'll learn what's fueling their decisions. Once you have this baseline understanding, you can determine how to adequately address those needs and anticipate accusations that they may have about your desired solution.

That said, listening to your counterpart and being open-minded doesn't mean you should blindly accept their advice. As a general rule, never take the advice or criticism of someone that you wouldn't switch places with. In other words, consider the qualifications of the critic before you rethink your solution. Even if you don't agree with your counterpart, you can strengthen a relationship by demonstrating an understanding of their perspective.






3. Uncover Value Perceptions

Before you agree to talk terms, you need to understand how your counterpart perceives the overall value of a contract and what individual components they value unequally. What's dictating their standards and driving their decisions? If your prospect is hyper-focused on cost, find out what other terms they value to determine where you have room to negotiate and influence the nature of the deal in question. If they value a lower cost more than receiving the full package of services you offer, why not trim the contract to include limited services at a reduced cost? If time is their chief concern, might they be willing to pay more or provide additional resources in exchange for an expedited timeline? By locating these value perceptions and bringing these items of unequal value to the negotiating table, you'll expand the pie and create more avenues to influence the outcome.


4. Demonstrate Understanding and Present Options

There's a stark distinction between feeling that you've understood what someone is saying and [demonstrating that you've understood](#). If you don't make a point of doing the latter, then you won't gain the trust you need to influence the contract at hand. Understanding can be demonstrated using tactical empathy, labels, mirrors, and summaries. By preparing a cheat sheet of positive and negative labels and calibrated questions prior to the negotiation, you'll help improve your flexibility under pressure and avoid using [counterproductive communication cliches](#).

By presenting options rather than framing a solution early on in the negotiation process, you're asking your counterpart to work with you to create a solution. Doing so helps them feel ownership over the agreement and [improves buy-in](#). In addition, presenting options gives you the power to shape the deal as you go, rather than being limited by the terms of an existing solution.



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5. Anticipate Negatives

Most people avoid addressing the elephant in the room because they're afraid that drawing attention to a negative will make it seem more significant. In fact, it's much riskier to leave a negative unspoken rather than addressing it outright. You can't avoid the negative element in a negotiation—you can only prepare for it.


To prepare, [conduct an accusation audit](#) and come up with some negative labels to address those accusations and dissolve a potential attack. If you're tasked with [repairing a bad business relationship](#) with a client who feels slighted by a previous interaction with your company, prepare labels to acknowledge their point of view without accepting responsibility.




6. Embrace “No” as a Beginning Rather Than an End

Sometimes, we need to say “no” before we can even consider saying “yes.” Giving your counterpart permission to say “no” to your ideas helps them retain their sense of autonomy. Oftentimes, the word “no” is a knee-jerk emotional response that we give when we feel uncertain or afraid. It’s a desire to maintain the status quo and a hard-wired protective mechanism. In short, it’s more often an emotional response than a well-considered, rational choice. In that respect, allowing your counterpart to say “no” can help further a negotiation and make them more willing to say “yes” down the line. When you feel protected and in control, your emotional register falls back to baseline and your decision-making abilities improve.

If you’re met with a rejection, work on [creating space](#) in the conversation before responding. If you aren’t receiving the confirmation you were shooting for, it may be an indication that you need to rewind and focus on [building rapport and trust](#) before attempting to influence your counterpart. Once your counterpart relaxes, you can work on adapting your strategy to [make “no” work for you](#).



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7. Address Implementation

In many business contracts, people spend more time on penalty terms than they do on the terms of implementation. The irony is, if you focus on implementation, then you won't need to worry about broken contracts.


To effectively persuade your counterpart, you must be able to trace a roadmap to their desired outcome. That means laying out a plan for implementation and earning buy-in from everyone who will be involved. What are the potential pitfalls of the solution in question? What might the consequences be if one part of the deal isn't upheld?

To avoid disappointment down the road, address how those potential downfalls will be accounted for in the implementation process. Focus on asking calibrated questions using a “when/what?” or “if/what?” structure—what we like to call “time travel” questions. This format is designed to make your counterpart think about something other than the present moment. The first “if” and “when” creates a condition or moves them to a point in time, and the “what” asks them to follow up and participate in the implementation plan. For example, you could ask, “When this breaks down in implementation, what are we going to do to fix it?” Asking these questions is a great way to address the concerns of behind-the-scenes deal-breakers who aren’t at the negotiating table and prevent the likelihood that a deal will be killed internally.

In addition, communicate with the members of your own team who will be responsible for implementation to ensure that you set realistic and attainable expectations in the sales process. If you plan to [negotiate as a team](#), practice communicating with one another in low-stakes situations and assign clear roles to make sure that you operate as a unit, rather than a collection of individuals.



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The
Bottom Line

There are bound to be instances when you negotiate like a Black Swan and explore every possible option and still hit a brick wall. It's these situations that give compromise a deceptive allure. It's easy to convince yourself that you've invested too much time and energy to walk away, and even easier to make concessions in the moment in an effort to get a contract signed.

If you've truly exhausted all your negotiation options, remember that it's better to walk away than to force a sub-par agreement. If you compromise beyond the limits you've set out for yourself or use your influence to force a prospect into a deal they don't feel good about, you'll end up damaging the relationship and condemning the deal's implementation. Rather than creating an enemy, part on amicable terms and leave the door open to future negotiations in the event that their needs or perspective evolve. Doing so will protect your integrity and that of your counterpart and preserve your company's reputation in the long run.

For more insider contract negotiation tips, check out our e-book, [*7 Unexpected Ways to Increase Sales*](#), and explore our [individual and business courses](#) to improve your effectiveness when it counts.



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