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# Closing the Deal

Going for the total “win” may not be the best strategy.

**A**s a very new lawyer, I once found myself sitting across the table from a seasoned and well-respected attorney. We were negotiating the terms of a transaction between our respective clients and had almost reached agreement. I say “almost” because I was insisting that we memorialize several meaningless concessions in favor of my client. Truth be told, my client hadn’t thought of any of these remaining issues, and wouldn’t have insisted upon making their resolution part of our agreement. In my efforts to achieve a “win,” I was quickly getting in the way of a successful outcome for my own client. Thankfully, my adversary stepped in and helped me get past myself so that our respective clients could move along.

I like to believe that early stumble was a product of inexperience. Unfortunately, that assessment may be inaccurate. Every day, otherwise able and seasoned businesspeople make this same mistake and impede their own ability to achieve a good outcome by insisting that their counterpart accept defeat. Although this approach may occasionally be an appropriate position in litigation, it almost never works in the transactional arena. The buyer may need the seller to assist in the transition of key customer or supplier

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relationships. Alternatively, the buyer may need the seller’s help to smooth relations with critical employees. In either case, or indeed a myriad other possible cases, a scorched-earth approach to negotiation is unlikely to succeed. The deal may close, but the seller is unlikely to be motivated to help the buyer make the business successful after the sale. By the same token, a seller who insists on extracting every potential aspect of value in a transaction, to the detriment of the buyer, is unlikely to succeed. Faced with such a seller, the smart buyer will often simply walk away from the deal. The skilled negotiator will avoid this trap by mapping out a strategy and prioritizing issues before sitting down at the bargaining table.

While adopting a take-no-prisoners approach is a quick way to lose credibility, it is by no means the exclusive road to failure at the

negotiating table. A second, and perhaps equally common method to achieve that result, is to bluff. As many scholars have noted, the odds of achieving a successful result are stacked against a party attempting to bluff.

Consider the party who asserts that a particular issue is a deal breaker. If the party is bluffing, there are three potential outcomes:

- 1) The bluff may be viewed by the non-bluffing party as truth but acceptable. If so, the party will not wish to call the bluff, and will instead accommodate that position and move on to issues of greater importance;
- 2) The non-bluffing party may view the bluff as truth but unacceptable. If so, the party also will not call the bluff, but will be unwilling to move forward. The bluffing party will have created an impasse, where a fictional reality (the assertion of make-or-break status for the issue) is at loggerheads with actual reality: the importance of the issue for the non-bluffing party; or
- 3) The non-bluffing party may view the bluff as fiction, and may call the bluff. If so, the bluffing party must either drop the issue (thereby admitting to the bluff and losing credibility) or perpetuate the fiction and risk losing the deal.

Only the first of these three outcomes is a good result.

Almost without exception, businesspeople and those who counsel them tend to be driven and competitive. By harnessing these traits, our business leaders achieve spectacular successes. By tempering these traits at the negotiating table, however, these same leaders are able to create successful transactions, where all sides to the transaction walk away from the deal committed to the success of the venture.

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