FROM THE IUSTORIA BLOG

What Litigation and Business Negotiation Have in Common

> *The courtroom and the boardroom run on the same principles. Master them, and you win in both.*

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Most people see litigation and business negotiation as two fundamentally different things. Court is formal, slow and bound by rules; negotiation is flexible and personal. On the surface, that is true. Underneath, both run on the same principles, and whoever understands them has an edge in the courtroom and at the negotiating table alike.

Over the years I have noticed that the best negotiators think like trial lawyers, and the best trial lawyers negotiate like seasoned dealmakers. I don't think that is a coincidence. Both worlds rest on three shared principles.

Principle One: Whoever Defines the Frame Holds the Advantage

In litigation, this has to do with how you set out the facts of your case. Under Czech procedural law, a statement of claim must describe the decisive facts and say what you are asking for; it does not have to contain a legal qualification, because the legal assessment is a matter for the court (Section 79(1) of the Code of Civil Procedure). Whether the case is treated as payment under a contract, as damages or as a claim for unjust enrichment, however, depends on the facts you allege and the evidence you offer. That in turn determines what you have to prove, when the limitation period starts to run and how much you can claim.

The same mechanism operates in business negotiations. Selling a company? It matters whether you frame the talks as an asset sale or as a strategic partnership. Discussing price? Then it makes a difference whether you talk about EBITDA multiples or about the value of the client portfolio.

I once had a client who was leaving a business partnership. The other side presented the situation as a "division of joint assets" and wanted half of everything. We reframed it as a "buyout of the business share under the articles of association", which meant a completely different calculation, a different process and, in the end, a different outcome. The facts stayed the same. The frame changed, and everything else changed with it.

The lesson is simple: never enter a dispute or a negotiation using the frame the other side has offered you. Always ask whether you are really discussing what the other side puts in front of you, or whether the matter is actually about something else.

Principle Two: Information Asymmetry Matters More Than "Truth"

In a civil dispute you have to allege facts and prove them. You don't have to reveal your strategy, though, or explain why you chose this particular procedural route. Be careful with evidence: the relevant facts and evidence must be put forward by the end of the preparatory hearing or, if there was none, the first hearing. The court takes later evidence into account only in exceptional cases (Section 118b of the Code of Civil Procedure). So you can hold something in reserve against the other side before the dispute begins, but not against the court.

Clients often struggle with this. They come in believing that court is where the truth gets uncovered. In contentious proceedings, however, the court does not go looking for the truth on its own. It decides on the facts as it establishes them from what the parties allege and prove. That is a fundamental difference.

In business negotiation the same applies, just without the procedural rules. Whoever knows more about the other side's motivations has the upper hand. And whoever knows what pressure the other party is under (time, money or reputation) can use it.

I remember a case in which we represented a company in a commercial dispute. The other side's line was "we are right and you know it". Morally, they really did stand on the right side. But we knew that the key witness on whom they had built their whole case had a conflict of interest of his own, and it would have come out in court. In the end we never had to use that information. It was enough that we had it: the moment we hinted that we knew more than they assumed, their negotiating position shifted.

I am not saying you should lie or manipulate. You should invest in preparation, which means gathering information and trying to understand the full context, both yours and the other side's.

Principle Three: Timing Is Strategy, Not Chance

When do you file the claim, when do you propose a settlement and when do you walk away from the table? Decisions like these look inconspicuous, yet they change the outcome.

In litigation I have clients who want to "get it over with quickly" and others for whom time is an ally. A debtor may be waiting for the limitation period to run out. A creditor, by contrast, needs to secure evidence before it disappears, and a business partner needs to convene a shareholders' meeting before the other side manages to transfer its stake.

In business negotiation timing matters even more, because no procedural deadlines regulate it. You can negotiate for years, or you can give the other side 48 hours to decide. Both are legitimate strategies, provided you know why you are doing it.

The most common mistake? Haste driven by emotion. A client who wants "peace at last" signs a bad deal. Someone who feels insulted rejects a reasonable compromise, and someone who is afraid takes the first offer.

A good lawyer, like a good negotiator, can tell when to act fast and when to wait. And has the courage to tell the client: "Now we push," or "Now we are patient."

Why This Matters

A lawyer who only understands statutes can tell you what the statute says. That is useful, but not enough. A lawyer who also understands business can tell you what the law means for your situation, your goals and your constraints.

Law, after all, is a tool, and with any tool what matters is who holds it and what they use it for.

Litigation and business negotiation have more in common than most people think. Once you see that, you stop regarding your lawyer as a necessary evil and start working with them as a strategic partner. Then the two of you can talk about what really matters to you in the dispute.

For the concrete procedural weapons of a civil lawsuit, which often work as leverage in negotiation, see What you can ask for in a civil lawsuit. If you are still unsure whether to litigate at all, read Not every battle is worth fighting and When to go to court and when to mediate. What behavioural economics and authors such as Kahneman, Cialdini and Voss have to say about negotiation is the subject of Statutes are just the foundation: psychology and tactics in a legal dispute. I write about the psychology of those who decide a dispute (judge, client, counterparty) in The Psychology of the Parties. Why the choice "court or negotiation" is often too simple, and why the game may be chess, poker, Monopoly or, unfortunately, Snakes and Ladders, is explained in Chess, poker, Monopoly and Snakes and Ladders. And if the person across the table is beyond the reach of rational argument, read You don't negotiate with terrorists, a piece about the irrational adversary and about when Harvard isn't enough.

Facing a commercial dispute where both negotiation and litigation are still on the table? In our dispute practice we routinely run both tracks in parallel. Get in touch and we will help you decide which path to take, and when.

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