



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 fundamentally different things. Court is formal, rigid, slow. Negotiation is flexible, fast, personal. On the surface, they are right. Beneath the surface, both are governed by the same principles — and whoever understands them holds the advantage in either arena.

Over the years, I have noticed that the best negotiators think like trial lawyers. And the best trial lawyers negotiate like seasoned dealmakers. This is not a coincidence. It is the result of both worlds operating on three shared principles.

Principle One: Whoever Defines the Frame Holds the Advantage

In litigation, this is called "legal qualification." You come in with an unpaid invoice dispute — but I requalify it as unjust enrichment. Or as a damages claim. Or as a breach of contractual duty. Each of these frames changes the rules. It shifts the burden of proof, alters limitation periods, recalculates the amount at stake.

The same mechanism operates in business negotiations. Selling a company? It matters whether you frame the discussion as an "asset sale" or a "strategic partnership." Debating price? It matters whether you anchor on EBITDA multiples or the value of the client portfolio.

I once represented a client leaving a business partnership. The other side framed the situation as "division of joint assets" — and demanded half of everything. We reframed it as "share buyout under the articles of association" — which meant an entirely different calculation, a different process, a different outcome. Not a single fact changed. The frame changed. And with it, everything else did too.

The lesson is straightforward: never enter a dispute or a negotiation using the frame offered by the other side. Always ask yourself — is this really what we are discussing? Or are we actually talking about something else entirely?

Principle Two: Information Asymmetry Matters More Than "Truth"

In court proceedings, you are required to assert claims and present evidence. But you are not required to reveal your strategy. You are not required to tell the court which evidence you are holding in reserve. You are not required to explain why you chose this particular procedural path.

This is something clients often struggle to grasp. They walk in believing the court is a place where the truth gets uncovered. It is not. The court is a place where decisions are made based on what the parties present. That is a fundamental distinction.

In business negotiation, the same applies — just without the procedural rules. Whoever knows more about the other side's motivations holds the upper hand. Whoever understands the pressure the other party is under — whether it is time pressure, financial pressure, or reputational pressure — can use that knowledge to their advantage.

I recall a case where we represented a company in a commercial dispute. The opposing party pursued a strategy of "we are right and you know it." They were right in the sense that they held the moral high ground. But we knew something they did not — their key witness, the cornerstone of their entire case, had a conflict of interest that would have surfaced at trial. We never had to deploy that information. It was enough that we had it. Their negotiating position shifted the moment we signalled that we knew more than they assumed.

This does not mean you should lie or manipulate. It means you should invest in preparation. In gathering information. In understanding the full context — not just your own, but the other side's as well.

Principle Three: Timing Is Strategy, Not Chance

When do you file a claim? When do you present a key piece of evidence? When do you propose a settlement? When do you walk away from the table? These are not tactical details. They are strategic decisions that alter outcomes.

In litigation, I have clients who want to "get it over with quickly." Other times, I have clients who need time — because time is working in their favour. A debtor running out the clock on limitation. A creditor who needs to secure evidence before it disappears. A business partner who needs to convene a shareholders' meeting before the other side transfers their stake.

In business negotiation, timing is even more critical because there are no procedural deadlines to 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. The client who wants "peace at last" signs a disadvantageous deal. The client who feels insulted rejects a reasonable compromise. The client who is afraid accepts the first offer on the table.

A good lawyer — and a good negotiator — distinguishes between the moments that demand swift action and the moments that call for patience. And has the courage to tell the client: "Now is the time to push" or "Now is the time to wait."

Why This Matters

A lawyer who only understands statutes can tell you what the law says. That is useful — but it is not enough. A lawyer who also understands business can tell you what the law says in the context of your situation, your goals, and your constraints.

Because law is not an abstract discipline. It is a tool. And like any tool, what matters is who is holding it and what they are using it for.

Litigation and business negotiation share more common ground than most people realise. Once you see that, you stop treating your lawyer as a necessary evil and start treating them as a strategic partner. And that shift is precisely the difference between winning a case and winning what actually matters to you.

For concrete procedural weapons in civil litigation (which often double as leverage in negotiation), see [What you can ask for in a civil lawsuit](#). If you are still weighing whether to litigate at all, [Not every battle is worth fighting](#) and [When to go to court and when to mediate](#) are the right next reads. The scientific background to *why* these parallels work — what behavioural economics, Kahneman, Cialdini, and Voss actually tell us about negotiation — is the subject of my deep-dive [Statutes are just the foundation: psychology and tactics in a legal dispute](#). On the psychology of those who actually decide every dispute (judge, client, counterparty), see [The Psychology of the Parties](#). On the fact that the framing "court or negotiation" is often oversimplified — that the game can be chess, poker, Monopoly, or unfortunately also "Snakes and Ladders," and each requires a different approach — see [Chess, poker, Monopoly — and Snakes and Ladders](#). And if the person on the other side of the table is unreachable by rational argument, [You don't negotiate with terrorists](#) is the text on the irrational adversary and on when Harvard isn't enough.

Facing a commercial dispute where negotiation and litigation are both on the table? In our [dispute practice](#) we routinely run both tracks in parallel. [Get in touch](#) — we'll help you decide which path, and with what timing, serves you best.

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