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# PRINCIPAL PRICING NEGOTIATION OR MEDIATION

## Teaching Note

This two-party simulation presents no ZOPA on the \$, but many opportunities for interest-based creation of value. If these are not discovered through the broad exchange of information as to the parties' interests and capabilities – what options might great mutual gain – there will be no resolution. However, with the robust exchange of information and some creativity, it should be possible to arrive at the outlines of a resolution that is better for both sides than their respective BATNAs.

The negotiation and mediation versions are virtually identical, differing only in that one references an agreement to try to resolve it in mediation and the other in negotiation. The problem is designed so that it can be done with participants in attorney roles, client roles, or both. Attorneys' fees are removed as potential barriers, as both attorney and client roles state that the attorneys are both recent law school graduates whose parents are the parties' friends. The attorneys' law firms are tolerant of newer associates gaining experience by taking small cases for family and friends at reduced or no fees. The clients' role information allows them to decide whether they wish to be represented in mediation or negotiation. However, the professor can surely make that decision for the class.

The plot line is simple: Pat Windham, a recently retired clarinetist with the symphony hosted a retirement party at Majestic Mansion, owned and operated by Morgan Magnus. Unfortunately, Windham's nephews drank (and were served) far too much and caused a total of \$60,000 in property damage - \$20,000 for the Mansion's heirloom chandelier they chose to use as a swing, and \$40,000 in other damage. These \$ figures aren't challenged. Magnificent Mansion wasn't insured for this type of damage.

All roles suggest that if mediation is not successful, Morgan is likely to file suit against Windham, and possibly the nephews too.

If students raise legal issues (or even if they don't), the instructor might acknowledge that "in real life", an attorney will look to what contract, if any, Windham may have signed before the event. The simulation contains no specifics as to a contract or its language but presumes Windham would have undertaken responsibility for damages at their event, or whether Morgan made any representations as to the Mansion's insurance coverage. As a practical matter, this author is assuming Windham would have signed something undertaking responsibility for the damage. (And even if not, the Mansion would seek to recover from Windham, albeit with less certain legal footing.) Moreover, even if the Mansion had insurance coverage, it would have given the insurer the right to pursue Windham for indemnification. These are offered as "side notes" regarding legal practice realities; students' negotiations/mediations and the debriefing should be directed at the negotiation strategies and skills, in a simplified simulation.

Back to the parties' constraints, interests, and capacities: Both Windham and Magnus are financially strapped. Windham made some disastrous stock investments and has only a



modest pension, and very small savings. Windham also invested in real estate with a fellow retired symphony player (flute): an old factory building just down the block from Majestic Mansion. They have been renovating and refitting it for rental, but most remain vacant. (We're assuming a negative economic environment, at least there.) In short, they have plenty of space, very near the Mansion, and theoretically, the time and ability to do much of the drywalling and painting themselves. If need be. Of course, they are also accomplished clarinet or flute players.

Morgan Magnus cannot afford to pay for the chandelier or all the other damage without tapping deep into its line of credit. Unfortunately, "the bank has been skittish about maintaining the credit line and Majestic Mansion needs capital NOW to seize a great opportunity." Morgan had entered a handshake agreement with a dance company to rent the ballroom for weekly ballroom dancing lessons on late Sunday afternoons, followed by 'gala' ballroom dance events. The Mansion would provide music and food. Morgan VERY much wants this booking as steady income from a time slot that would not overlap with other bookings. Most parties are on Friday or Saturday evenings or Sunday brunch – Majestic Mansion must still compete (in this tough market) for these bookings.

To make this work, Morgan's business plan calls for building greater in-house catering capacity, by expanding Majestic Mansion's kitchen into an area currently used to house extra tables, chairs, and gift store inventory. Majestic Mansion has no extra space. Morgan "would like to build out some additional storage area or construct a storage shed but that is problematic on a historic property. "

If this information were known to both parties, some options immediately come to mind:

- 1) Majestic Mansion uses space in Windham's property for additional storage – housing those tables, chairs, and gift inventory. Rent or perhaps an ownership share of the building could be valued and credited against any financial amount agreed to.
- 2) Could the nephews (or other family members) undertake the obligation to assist in moving items to and from storage when needed by the Mansion, for some defined period? What are the values of those services?
- 3) Pat Windham and their flutist partner could agree to perform at the Mansion's events, including but not limited to the weekend dances. (And if flute or cello weren't sufficient, could they enlist other musician friends?). Again, a value for these performance gigs would be credited against the amount Windham agrees to "pay."
- 4) Could Windham and friends agree to help market the Mansion's event business?

Note: I'm assuming that, although the "magnificent" chandelier was valued at \$20,000, a suitable less-historic chandelier or other lighting could be obtained for far, far less. If Morgan Magnus is fixated on some cash payments, perhaps Windham could cover that.



While this case rather obviously presents the challenge of exchanging information and finding options that create value, it offers additional rich opportunities for skilled negotiation and mediation practice and class discussion. The following themes may (and perhaps should) arise:

- The importance of trust for any agreements that contemplate future coordination and cooperation. How can you negotiate/mediate in ways to build that trust? Here, without agreement as to future interest-based cooperation and exchange, there is no ZOPA on the dollars. Even if some trust can be built, is it wise for the parties to rely on trust alone? What enforcement or fallback mechanisms or other security can be built into an agreement?
- On the topic of trust-building, how might this be affected when negotiating/mediating with just principals? just attorneys? Both principals and attorney present?
- Windham's *feelings* about the entire debacle! A modest effort at empathy should yield insight that Windham feels betrayed by the nephews, and likely their parents (family, after all) for not stepping up. They left Windham holding the bag – how could they? Windham could also be feeling regret that, because of unlucky or unwise past financial decisions, their retirement involves financial stress – an embarrassingly small bank account. To reach this age – this time – with so little, Pat can't feel good about that. Should Pat have retired? (assuming it was a choice).
- Of course, while Pat argues that the Majestic Mansion bartenders shouldn't have served the "hooligan" nephews, could Pat or other family members have intervened before things got out of hand? Were they sober in that moment? Feeling some possible responsibility tends to push us to blame others.
- On the Majestic Mansion side, I admit to having not focused much on Morgan Magnus' feelings. But it should be clear that Windham's failure to accept any responsibility, even to apologize, would anger Magnus. Unless that's acknowledged, Magnus is less likely to feel any empathy for Windham, and the idea of working with Windham to solve storage and event challenges would be less palatable. (Even if Magnus would agree to that by necessity – you can't get blood from a stone – Magnus' feelings about Windham will no doubt influence how generously, or not, Magnus is willing to value Windham's contribution to musical performances or space in Windham's nearby building.)
- Morgan might also feel some frustration at the Mansion's bartenders or other staff's contribution to the damages by over-serving alcohol or failing to intervene when things began to get out of hand.
- Morgan might also feel regret at his failure to secure insurance coverage, and pressure at the precariousness of Morgan Mansion's business.



Faculty colleague Cathleen Kuhl and I have used Principal Pricing in law school mediation courses, and I've used it in at least one CLE workshop. It works very well: there's enough meat, but it has the advantage of being a short and simple fact pattern. While I've provided a straight negotiation version here, I confess to not remembering whether I've also used it in a negotiation workshop or course. But there's no reason it wouldn't work well if your goal is to teach the importance of seeking and finding interest-based solutions that create value for both sides, even in a legal dispute context.

Finally, I've included a set of "Reframing" vignettes my colleague and I created and used in our mediation course. These assume a joint session – moments in a mediation when all participants would be present. The setup is to give these vignettes to students in attorney or client roles. Played convincingly, they create a difficult moment in the session, ripe for mediator intervention in the form of a reframe. It works well to let the students play out the scenes (either in small groups or rotating fishbowls), and then discuss what the impact of the "challenging" comments might be, what reframes worked well, what didn't, and why.