

Negotiation by Michal Leathes. Wolters Kluwer 2017 307 pages; £42

Why should mediators read a book about negotiation? Especially one that is subtitled "Things Corporate Counsel Need to Know but Were Not Taught."

There are three good reasons:

- * While not every negotiation is a mediation: every mediation is a negotiation.
- * The author is Michael Leathes. If anyone knows about negotiation and mediation, he does. A lifetime corporate counsel, Leathes conceived of and set up the International Mediation Institute (IMI).
- * In-house counsel are important clients for civil and commercial mediators. So it's a good idea to find out what they want and what their expectations are. See in particular p. 29.

What you will not find in this book is a manual on how to mediate or negotiate. As Leathes says in his Preface: "This book is not a user guide to negotiation.... Rather it aims to inspire negotiation ideas and concepts from the standpoint of a lawyer employed by a company or other organisation." So it is a Why -to -do- it, rather than a How- to- do -it book. Also your reading will reveal it is a sales pitch.

In 10 chapters, plus an overview entitled "Tomorrow" Leathes takes you through the Negotiation Idea. He provides an intriguing mixture of personal anecdote from his own experiences as a negotiator, a summary of recent negotiation research from North American business schools and practical nuggets. His style is easy to read although occasionally wordy and betraying research rapture. He has some good one-liners. eg "Trust is closely connected to saviness." "The art of war is the art of deception, so the art of negotiation is the art of perception."

Leathes believes that negotiation is an art and negotiators are artists. But he also thinks that negotiation is a hard skill that can be taught and assessed and one that that all modern lawyers, both in-house and external, must have. As he says "Demonstrating fine negotiating skills is a prime way to meet the expectations that modern business management increasingly have of their internal counsel at all levels." (p.10). The same applies to external counsel.

In Chapter 2 Leathes stresses that preparation is paramount and usefully discusses what is involved in effective preparation for any negotiation. He deals with transactional negotiations as well negotiations about disputes.

Chapter 3 summarises some of the lessons that negotiators and mediators have drawn from neuroscience. Most are familiar. In particular Kahneman's Thinking Fast and Slow model, Danziger's blood sugar research, and 'in-groups' and 'out -of -group' analysis.

Chapter 4 deals with culture and again summarises well-known concepts eg Hall /Hostetler /Lewis /Meyer. Especially useful are the discussions on guanxi and how lawyers doing their job to their own professional standards can mess up negotiations. (p. 69). Norms aren't always normal for everyone.

Leveraging (chapter 5) is a universal negotiation technique. This is one of the best chapters in the book. The case study from his own experience of a corrupt expert is fascinating and revealing. But as he so sensibly says, "Leverage can be a seesaw, and also an illusion." His analysis of the Harvard concepts of BATNAS and ZOPAS is refreshingly realistic and well worth reading. So is his discussion on Anchors (p. 87)

Chapter 6 discusses Communicating. All mediators will benefit from reading this. Although Leathes does seem muddled over the difference between open and closed questions, he rightly and refreshingly emphasises the importance of 'effective answering' as well as 'active listening' and 'open questions'. He is realistic about how useful body language can be but emphasises how small things can really help: "Simple rapport-building practices like respectfully and subtly adopting another person's seating stance or gestures, or nodding at the speed at which the other is speaking, can create a positive atmosphere." On p. 103 he advises lawyers not to get out all the papers but to "communicate a different non-verbal message by having no papers in front of you for as long as possible." All mediators see how tension and stress block settlements and at p. 108-110 Leathes offers amusing and helpful tips on tension release using humour, venting and apologising.

He rightly emphasises how the importance of staging i.e. where negotiations take place and who sits where etc is often overlooked. Mediators can have more influence than they think over staging and should bear in mind Leathes' wise words "Like humility, hospitality can take the edge off hostility". Everybody who uses email should read his experience-based discussion on E-negotiating at p.115-118. Salutory or what?

Chapter 7 deals with process and concentrates on deal facilitation. Leathes advocates more imagination in negotiation process design. He makes the acute point that prenups are an excellent analogy for facilitated deal-making and that a prenup may in essence be a Joint Venture agreement.

Chapter 8 on Disputes discusses mediation and other non-litigious dispute resolution procedures such as a evaluative mediation, conciliation/non-binding arbitration, arb- med- arb, baseball arbitration and Dispute Resolution Boards. Of particular interest to mediators is Leathes discussion of evaluative mediation at p. 160. He also graphically retells the horror story of the Litton v Honeywell litigation.

Chapter 9 grasps the nettle of "ethics". This is a refreshingly candid discussion. As he says, and he should know: business ethics are not always the same as legal ethics. Everybody should read it.

Chapter 10 on Techniques summarises some of the points made in the previous text and discusses 20 well-known mediation techniques. The discussion about Contra-flow is original and intriguing.

The book concludes with some thoughts about the future in a chapter headed Tomorrow. Here, perhaps, we find the real reason for the book: it is a sales pitch. Having set up the International Mediation Institute, Leathes now wants to set up the International Negotiation Institute. The book makes a compelling business case.

Leathes' publishers could have helped him by producing a more attractive and robust cover-mine keeps curling up. Also very confusingly they put book titles in the same font as the main text so they get lost. Normally they are italicised. A point for the next edition.

Is this book worth buying and reading? Definitely.