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Negotiating the Deal & The Contract

- Getting your IP set
- Negotiating the Deal
- Avoiding Contract mistakes
- Corruption Heads up

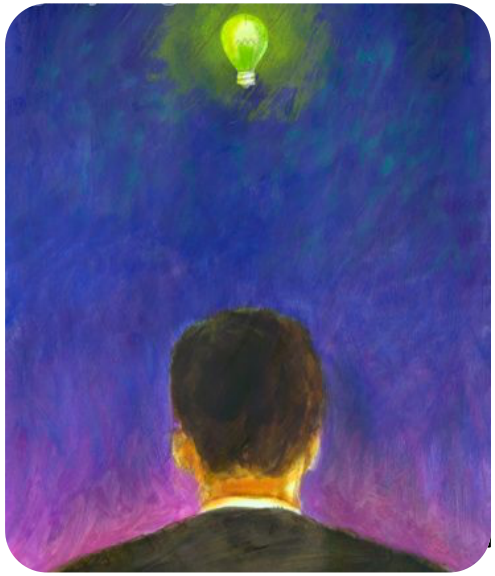
David F. Day, Esq.

Hawaii Pacific EXPORT COUNCIL

HAWAII FOREIGN-TRADE ZONE NO. 9

International Legalities

Intellectual Property Rights



- **Patent Law:** protects an invention. Countries award patent to inventor patent application.

- **Trademark Law:** word, symbol, name, that identifies and distinguishes the source of goods. Most countries require a trademark to be registered; some countries do not protect trademarks.

- **Copyright Law:** protects original works of authorship. In U.S. includes computer software and most intellectual works.

Art of Negotiation

Cultural Sensitivity

- Gifts, Favors, & **Entertainment**
- Body Language & Humor
- *Gender Roles*
- Corruption
- Acceptable Dress
- Business manners & methods: offers/counters, punctuality
- **Religious Customs**
- *Dietary Practices*

Art of Negotiation

Example: Business Deal

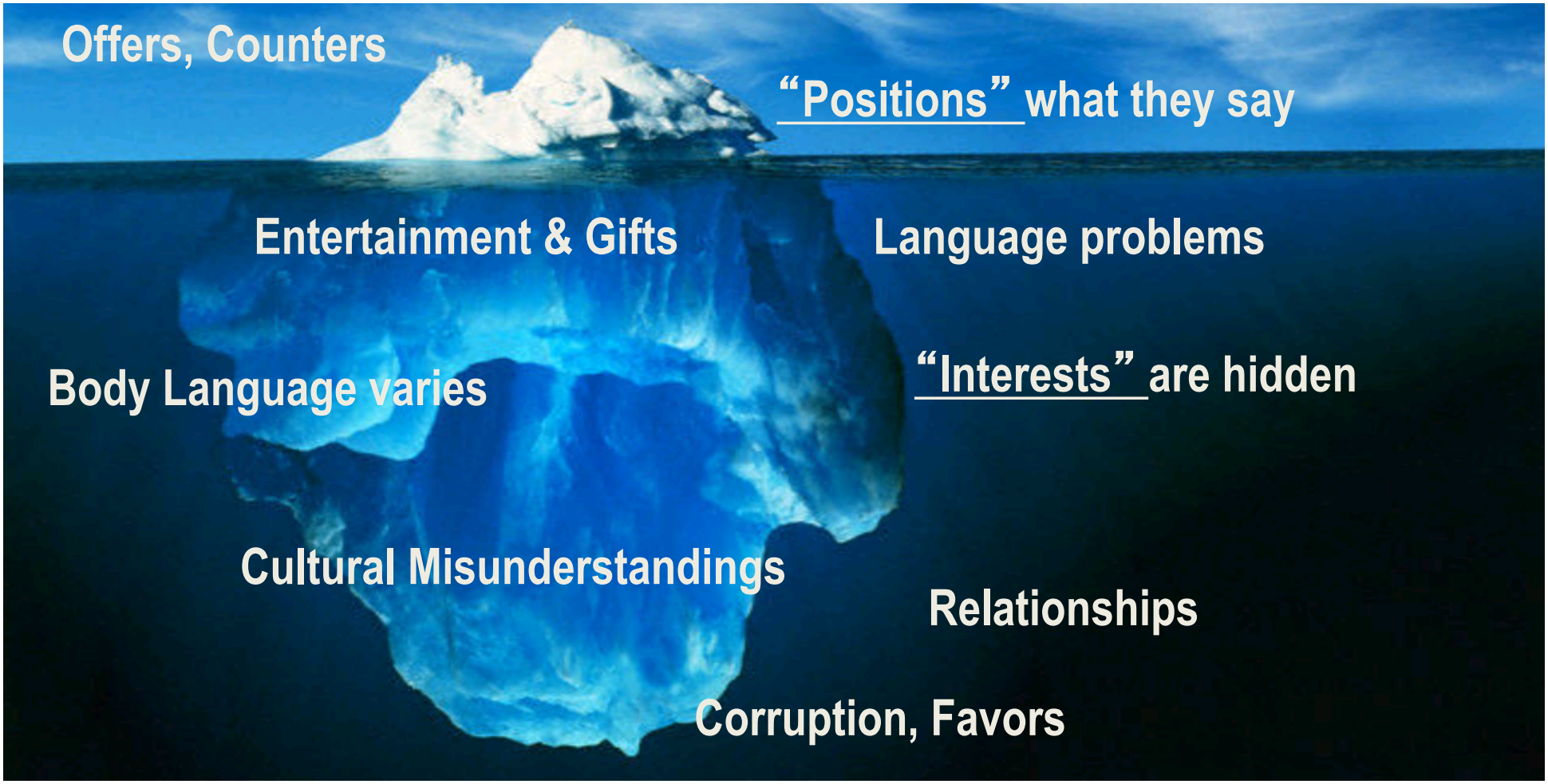
Relationship Driven: Bonding & Trust

- Entertainment, gifts, favors
- Obligations, surprise demands
- “Handshake” contracts

Contract Driven: Snapshot of Future

- Strict contracts
- Enforcement Remedies

Art of Negotiation



Art of Negotiation

Smooth Negotiations Require that You:

i. Develop a Cooperative Spirit

ii. Understand your limits

iii. Identify your goals

iv. Strive for clear communications

v. Be aware of possible cultural biases

International Legalities

International Dispute Resolution

- **Foreign Courts:** **No, no, no.**
- **Arbitration Law:** 1958 New York Convention. Reciprocal enforcement of Intl Arb Awards. ***Create by contract***.
- **Mediation:** Neutral 3rd party to help negotiate Humpty Dumpty back together again.

The Contract

- **Negotiate the Deal Points**
- **Language**
- **Choice of Law**
- **Foreign Legal Counsel?**
- ***Arbitration/ADR Clause! –to trigger reciprocal enforceability under the 1958 N.Y. Convention***

Arbitration/ADR

- Allows for procedural informality. Parties can opt for simple procedures, therefore very different from a trial, generally seen as a simpler, more efficient and thus less expensive approach
- Private, confidential proceedings

“The Clause”

- ***“Any controversy or claim arising out of or relating to this contract, or a breach thereof, shall be determined by arbitration administered by the American Arbitration Association in accordance with its International Arbitration Rules.”***

"The Clause" – Part 2

- The parties should consider adding:
- ***"The number of arbitrators shall be (one or three)";***
- ***"The place of arbitration shall be [city, (province or state), country]";***
- ***"The language(s) of the arbitration shall be ___."***

Corruption

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U.S. Attorney General Stresses Continued FCPA Enforcement

By SAMUEL RUBENFELD
Apr 24, 2017 4:09 pm ET

The U.S. attorney general stressed Monday that prosecutors won't relent in their pursuit of foreign-bribery cases.

Attorney General Jeff Sessions said at a corporate compliance conference in Washington, D.C., that the Justice Department will continue to strongly enforce the Foreign Corrupt Practices Act and other anti-corruption laws, enabling "an even playing field" for law-abiding companies.

"Companies should succeed because they provide superior products and services, not because they have paid off the right people," he said, according to prepared remarks.

Corruption

Where it is endemic and systemic…How do you handle?

- **Do not rely on local partners to take care of it!**
- **FCPA – Use it as a shield**
- **Just say, "No"**
- **Never say "No" but don't say "Yes"**
- **Other strategies: "Award", Cafeteria, Park, and Industry pact.**
- **FCPA does have an exception…**

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