



Excerpted from the Ole-- Concise Case Analysis & Evaluation Tool
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6. BATNAS, WATNAs & PATNAs

Effective negotiators and dispute strategists evaluate BATNAs, WATNAs and PATNAs.

BATNA = **B**est Alternative To a Negotiated Agreement now - ie the most favourable realistic scenario if there is no settlement (e.g. we win on all significant points at trial)

WATNA = **W**orst Alternative To a Negotiated Agreement now - ie the least favourable realistic scenario if there is no settlement (e.g. we lose on all significant points at trial)

PATNA = **P**robable Alternatives To a Negotiated Agreement now - ie the most likely realistic scenario if there is no settlement (e.g. what the Court or Tribunal is likely to decide)

6.1 Assess our BATNA, WATNA and PATNA, and, assess them hypothetically on four levels:

- The amount of time it is likely to take to arrive at a **final** judgment or award (i.e. taking into account all possible appeals and tactical delays).
- The total cost involved in getting to the **final** judgment or award.
- What the **final** Judgment or Award will be - i.e. the final outcome.
- What the consequences of that outcome would be.

6.2 Then assess the Other Side's BATNA, WATNA and PATNA on the same four levels.

6.3 Capture these with keywords on the chart:

		Us	Other Side
BATN As	Time		
	Cost		
	Award/Outcome		

	Consequences		
WATNAs	Time		
	Cost		
	Award/Outcome		
	Consequences		
PATNAs	Time		
	Cost		
	Award/Outcome		
	Consequences		

4. Financial Loss Analysis

4.1 Indicate on the table how losses are calculated, both for Us and the Other Side.

The way in which damages may be calculated can vary from jurisdiction to jurisdiction. The quantum of damages can vary greatly, depending on the theory that is to be applied and the evidence in support. The assessment of quantum is sometimes left until late in proceedings, after issues of liability have first been determined. However, this can lead to unsatisfactory situations, where the costs of the proceedings become disproportionate to the damages that can be obtained. An early understanding of the likely theoretical bases on which damages may be claimed and their approximate assessment is an important step to be done at the beginning when a conflict arises. These calculations should be revised continuously throughout the case. Complete the chart:

Financial Analysis of Loss	For Us	For the Other Side
Restitution Damages		
Expectation Damages		
Unjust Enrichment Damages		
Industry-specific norms		
Value of any additional remedies		
What, realistically is the best claim		