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No-Haggle Agreements

Saul Levmore
dangelolawlib+saullevmore@gmail.com

Ariel Porat
Ariel.Porat@chicagounbound.edu

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Abstract

Some buyers might prefer not to haggle either because they recognize that the seller they face is likely to be a superior bargainer or because it is easier to comparison shop when prices are known and do not require an investment in transaction costs. Sellers, in turn, might appeal to these buyers by promising a no-haggle environment. In some settings, sellers can go further by promising individual buyers that they will not haggle. These buyers might then engage in one round of haggling, stating a price which the seller agrees to accept or reject, with no further possibility of negotiation. Such buyers might be more confident of getting better offers from agreeable sellers. We describe why and when such a process might be attractive, and suggest a legal remedy that makes it possible. This no-haggle process might be attractive to some repeat sellers when dealing with occasional buyers, and might often be attractive to one-time sellers and buyers, as in the case of many real estate negotiations.

I. Enforceable No-Haggle Agreements

Some buyers prefer not to haggle, especially when dealing with a professional seller, who is apt to be the superior bargainer. In turn, sellers can appeal to these buyers by promising a no-haggling environment. New and used car dealers that have chosen this strategy are usually entities that have developed national brands, capable of developing

* *Saul Levmore* is the William B. Graham Distinguished Service Professor, University of Chicago Law School. *Ariel Porat* is the Alain Poher Professor of Law, Tel Aviv University, and Fischel-Neil Distinguished Visiting Professor of Law, University of Chicago Law School. We thank Lee Fennell, Richard McAdams, Martha Nussbaum, and Lior Strahilevitz for helpful comments.

and then capitalizing on reputations for keeping their promises about pricing.[1] These no-haggle sellers must hope that buyers will perceive that the announced, and therefore actual, prices are close to the sellers' costs or reservation prices. It helps that these sellers operate in competitive markets with many well-informed buyers. In contrast, a non-repeat seller, like most buyers, will find it difficult to convince another party that there will be no further bargaining, or that a reservation price has indeed be revealed. We propose a device, or legal maneuver, to facilitate such promises.

Consider a buyer, B, who wishes to buy an automobile from a seller, S, at a price of 75 or less. S's sticker price is 100. B wishes the seller were of the no-haggle kind. Among other reasons, accurate (no-haggle) sticker prices reduce B's transactions costs when comparing models or dealers. In the absence of such announced prices, the less the expected bargaining, the sooner will B know the actual price required by a given seller. In dealing with S, B knows that if he begins the familiar bargaining process at a price of 70, S might lower her price a bit, and the parties might eventually reach a bargain. But B is truly unwilling to pay more than 75 for this model automobile, and fears that S, though perhaps willing to sell at 75, will not do so because S will think that B is hoping for a low price, but engaging in a dance on the way to a price closer to 100. No matter how much B insists that 75 is the most he will pay, there is the likelihood that S will think that B is bluffing or unaware of his own future self. Even if B walks away, S may know from experience that many buyers do return the next day with higher offers.

As an occasional buyer, B is unable to develop a reputation for no-haggle shopping. The idea developed here is that B would like to communicate to S that he prefers no-haggle shopping and, indeed, might only make an offer above 70 if S agrees to a no-haggle process. S, in turn, must be aware that buyers like B exist. S can choose to accommodate B, by offering: "You might like my no-haggle option. If you agree to it with respect to a particular automobile, then you state a price, and I will either accept or reject that price immediately. If I attempt to bargain, by offering and then selling the automobile to you at any price other than the one you declare, I will owe you the

[1] CarMax sells used cars of recent vintage with such a strategy. Huang, Guofang, Posted Price and Haggling in the Used Car Market (January 1, 2010). Available at SSRN: http://ssrn.com/abstract=1805298 or http://dx.doi.org/10.2139/ssrn.1805298. General Motors' Saturn division did this with its new cars for some time. Thomas J. Cosse & Terry M. Weisenberger, *Saturn Buyers: Are They Different?,* 5 J. Marketing Theory & Practice 77 (1997). Many department stores can be understood to follow this pattern, though the inability to bargain there might be traced to agency problems. There are regional and national brands that advance the no-haggle strategy by specifying when sales will occur. For example, one brand promises that marked prices will decrease by 20% after clothes are on the sales floor for one week. After two weeks, a 30% discount takes place.

difference between your no-haggle offer and our eventual sales price." In this illustration, once B and S agree to proceed with a no-haggle process, and B offers 73, for example, then S can sell or not at that price; if S turns the offer down but later transacts with B at 85, in violation of the no-haggle agreement, S owes 12 to B. This payment can be thought of as a fine. Alternatively, the liability of 12 can be understood as quasi-stipulated damages or a variety of specific performance; S has agreed to sell at 73 or not at all (to B), and these damages bring about that net price.

To be sure, S might reason that there will be buyers willing to pay more than 73, but also eager to agree to subscribe to the seller's no-haggle process in the hope that the seller will accept the invited take-it-or-leave it offers, though they are lower than the prices the seller might have obtained through continued haggling. That risk will cause some sellers to write off B, rather than introduce no-haggle agreements. Other sellers might rely on their ability to distinguish among customers, and they will be selective in their offers of no-haggle agreements. And some sellers might offer no-haggle agreements to all (or many) buyers, but then accept some fraction of final offers above a price, such as 73. The point of this last strategy is to give buyers, willing to pay more than 73, some reason to haggle rather than to accept the process and count on the seller to accept the final offer.

II. Advantages of No-Haggling

An offer *not* to bargain can provide information, or a useful signal, and more so if the signal is reliable. Law can make it more reliable by offering a remedy in the event of a false signal. Bargaining normally involves exchanges of information that may or may not lead up to a contract. In some settings one party announces a price, not to mention other terms, and other parties can accept the price or move on. In other contexts, prices are "set" on both sides, with no bargaining authority given to agents, and parties discover whether or not they have a deal. But in many situations, including those that concern us here, the parties maneuver to get as good a deal as they can. Each side knows its reservation price; the buyer knows the highest price he will pay, and the seller knows the lowest price she will accept.

Imagine, then, the common scenario in which at least one of the parties awaits evidence of price flexibility on the part of the other. "Your price of 100 is outrageous. I can wait another year before replacing my refrigerator. If you lower the price to 70, I will, however, buy it from you now." We expect, and law tolerates, puffing and huffing on both sides, but within limits. If in truth the buyer has no refrigerator at all, and completely fabricates the ownership of one that will last another year, or if the buyer has actually looked far and wide, and regards the asking price of 100 as a fantastic bargain, there is no expectation of a legal remedy for the seller – but why not?[2] Law might even penalize dishonesty about reservation prices. It could require both parties to write down their reservation prices and then declare a sale if the seller's price is lower than the buyer's, perhaps splitting any overlap, or surplus. If the parties could rely on one another's statements regarding reservation prices, they could save transaction costs and, more important perhaps, avoid missing out on mutually beneficial bargains, as they feign, lunge, and withdraw in the quest for immediate or long-run bargaining advantage.

Unfortunately, perhaps, a transparent system is difficult to imagine much less manage. The law would need information about reservation prices, and parties would learn to carefully conceal this information, even long after an exchange. When, for example, a seller discloses a reservation price of x to a buyer, B1, but is later found to have sold the same good to B2 at a price below x, the seller might insist that circumstances had changed between the revelation to B1 and sale to B2. If B1 did not purchase the good, a successful claim against the seller is even less likely. Ethicists or economists might idealize a system in which reservation prices were fully disclosed, and repeat players might come close to this civilized system with its transparent reservation prices, but in the real world law has no way of knowing one's inner thoughts, and strategic behavior looms large. At best, a seller might try to signal that her price is really close to the reservation price, or to the price available to the seller from wholesalers, by promising to refund the difference if the buyer finds a lower price at this or any competing seller's establishment within a specified period of time. Contract law would then provide the buyer with a remedy if this promise were breached.[3] We return to this sort of promise below.

In practice, no-haggle arrangements appear to have more to do with strategic behavior, or perceived inferiority in bargaining skills, than with reservation prices.

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[2] Russell Korobkin et al., *The Law of Bargaining*, 87 MARQ. L. REV. 839, 840 (2004) ("It is universally recognized that a negotiator's false statements concerning how valuable an agreement is to her or the maximum she is willing to give up or exchange in order to seal an agreement (the negotiator's 'reservation point,' or 'bottom line') are not actionable, again on the ground that such false statements are common and no reasonable negotiator would rely upon them."); Scott R. Peppet, *Can Saints Negotiate? A Brief Introduction to the Problems of Perfect Ethics in Bargaining*, 7 HARV. NEGOTIATION L. REV. 83, 92 (2002) ("it is acceptable for a lawyer to misrepresent a client's reservation price").

[3] Similarly, a buyer might say: "Let me buy this for 70, and if within the month you find another buyer who would have paid more than 70, I will owe you the difference." If the seller produces such a buyer, the first buyer will suspect collusion, because the second risks nothing. In turn, buyers will be unlikely to make the suggested offer.

Department stores, and other vendors known not to bargain, retain control over the timing of sales and the availability of advertised items, but consumers who doubt their own bargaining skills may well like the idea that the seller is not discriminating among buyers; if many other people buy this item at the marked price, then the price can not be too bad. Insecure buyers might have reason to believe that a small number of sophisticated comparison shoppers are sufficient to keep prices in line.[4]

In a competitive market with homogeneous goods, a buyer's reservation price is, in any event, of little use to sellers. Competition among sellers will reduce price to something like marginal cost and, absent collusion, there is no way for a seller to capitalize on the fact that some buyers have reservation prices far in excess of marginal cost. On the other hand, when transaction costs are substantial, as they might be for the purchase of automobiles, or where goods are unique, as in much of the housing market, sellers stand to gain when they are superior negotiators and some buyers have high reservation prices. In turn, it is in these settings that other sellers might appeal to wary buyers by offering no-haggle agreements. Our proposal is aimed at these sellers. They might promise an interested buyer, or all buyers, that they will accept or reject the stated price immediately, and any future breach, in the form of a sale at a higher price, will be re-engineered to the price stated by the buyer after the no-haggle agreement was chosen. As above, once B and S agree to proceed with a no-haggle process, and B offers 73, for example, then S can sell or not at that price; if S turns the offer down but later transacts with B at 85, S owes 12 to B.

III. Disadvantages of No-Haggling Agreements

A. Disadvantages to the Parties

It bears emphasis that a seller can decline to offer no-haggle agreements and a buyer need not accept one if proffered. Even a buyer who perceives that proceeding under the terms of a no-haggle agreement will elicit a lower price from the seller, might prefer to retain the power to change his mind. A buyer's reservation price is often not fixed, but rather a function of information obtained through comparisons over time, not to mention the buyer's income. Similarly, the seller might say: "Look, I know that other sellers offer you a no-haggle option, such that if you accept that term, you state a price that is then accepted or rejected with finality. You might well be offered a lower price in that

[4] *See* Louis L. Wilde & Alan Schwartz, Equilibrium Comparison Shopping, 46 REV. ECON. STUD. 543 (1979) (showing that when a large enough percentage of consumers compare suppliers, suppliers are induced to charge competitive prices).

manner, but my experience is that this automobile and my service team is so terrific that if you think about the matter, and talk with satisfied customers of mine, you will change your mind. Therefore, I will not do anything that precludes you from changing your mind and agreeing to a price above 75. I am always ready for you to return to the bargaining table."

A seller may choose not to offer our no-haggle procedure because the seller thinks the relevant pool of buyers is rich with prospects who have high reservation prices. A seller with a cost of 70 might wait for a buyer who will pay 90 because the seller thinks that such a buyer is likely to materialize, and that competition among sellers is insufficiently robust to drive the price down to 70. [5]

It bears emphasizing that although no-haggle processes can be valuable, and creatively designed, there is good reason to think that most parties perceive benefits from the freedom to haggle, and would turn down no-haggle agreements of the kind advanced here. Reservation prices and bargaining positions can change as new information is obtained. It is also the case that a repeat player might find it most profitable to make exceptions, either because credibility does not require perfect reliability or because this player can detect worthwhile compromises with some parties it encounters. A department store with a no-haggling policy might find it worthwhile to suggest price flexibility on occasion, as when a buyer learns that a sale is coming, but seems unlikely to return during the sale periods. The store policy might require a manager to make this exception to the no-haggling norm. Similarly, a store might have a strict, which is to say no-haggle, policy regarding returns and refunds, but make exceptions to it. An exception is likely to involve some judgment about the particular buyer, the reason for the return, or the store's current inventory. In many cases this information would have been influenced by the informed party's bargaining strategy if haggling (even over price alone) had been permitted or expected.

B. Possible Disadvantages from a Social Perspective

[5] It is tempting – but difficult – to generalize about the sorts of buyers and sellers who will agree to proceed under the terms of a no-haggle agreement. The agreeable buyer either dislikes the haggling process or aims to send a credible message about his highest offer. If the seller thinks that her pool of buyers is rich with buyers who simply want to send a credible message in order to out-haggle the seller, then the seller need not offer no-haggle terms. But a seller may seek information about the buyer's reservation price, and sense that a no-haggle process is one way to gain that information.

Even if a buyer and seller would benefit from an enforceable no-haggle agreement of the kind suggested here, the question remains whether these agreements ought to be enforced. Put differently, why have no sellers, markets, or legal systems developed or even experimented with enforcement and immutability of the kind we require?[6] One possibility is that law reflects citizens' understanding that their sober selves will regret commitments made in earnest by their agitated earlier selves.[7] At the same time, bargains are much more valuable if they cannot be undone when one party claims regret. The problem is a familiar one, and law responds, first, by looking skeptically at stipulated damages that are greater than actual damages and, second, by enabling commitments where the cost of limiting escape falls mostly on the party who made the commitment.

Law sometimes, but not always, abets commitment strategies. In some jurisdictions addicted gamblers can enlist casinos in their battle to control the gambling impulse.[8] In a sober moment, the potential patron can place himself on a "do not admit" list, and the casino is then bound to withhold winnings and to call the police and charge the gambler with trespass if it discovers the weak-willed gambler on its premises. It is likely that the casino agrees to this plan not because it directly attracts more gamblers, but rather because it appeases the regulatory authority, or other political interests, but the overall picture is one of empowering the ex ante bargain by denying ex post renegotiation or regret. Similarly, law enables prenuptial agreements that might make divorce less likely, or proceed on different terms, than the future self might like.[9] Law surely allows limited

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[6] There are, however, limited areas where law encourages or allows only take-it-or-leave-it offers or love-it-or-leave-it arrangements. *See* Saul Levmore, *Love It or Leave It: Property Rules, Liability Rules, and Exclusivity of Remedies in Partnership and Marriage*, 58 LAW & CONTEMP. PROBS. 221 (1995). B's threat is somewhat like these offers, except that there is a remedy for breach that might encourage efficient breach of threats.

[7] Such a theory would require that people regret threats made in agitation, or without knowledge of their future selves, more often or more dangerously than they make promises they will later regret. This seems unlikely.

[8] Jim Holt, *The New, Soft Paternalism*, N.Y. TIMES (Dec. 3, 2006), http://www.nytimes.com/2006/12/03/magazine/03wwln_lede.html?oref=slogin&_r=0 (stating that "[i]n some states with casino gambling . . . compulsive gamblers have the option of putting their names on a blacklist . . . that bars them from casinos" and that "[i]f they violate the ban, they risk being arrested and having their winnings confiscated").

[9] RESTATEMENT (SECOND) CONTRACTS at §189 (promise in restraint of marriage) (1981).

covenants not to compete.[10] Some of these examples, or contractual terms, are not immutable, and renegotiation is possible, but there is both ex ante commitment and ex post no-haggling in these cases. Plainly, law often enables a party to bind, or limit the contractual freedom of, the future self.

In contrast, law no longer allows eager and weak-willed borrowers to agree to debtor's prison or slavery in the event of default. It enforces stipulated damages, but only to a point.[11] In these cases, legal enforcement is less likely as the restriction seems less efficient ex post. It is not obvious how to fit the proposed immutability of the no-haggle agreement in this grouping. The promisor must recognize that new information will bring on regret, not to mention ex post inefficiency. The parties do have high transaction-cost alternatives, and perhaps that makes it less likely that law will provide ready off-the-rack rules for those who think they want help in binding their future selves. We have tried to ensure law's cooperation by framing the no-haggle process, and the remedy for breach, as something the seller (in most cases) offers the buyer. The seller need not offer this process, and the buyer need not accept it. If, however, the parties voluntarily proceed with a no-haggle agreement, courts ought to enforce the fine, or straightforward damage provision, suggested here.

Of greater theoretical interest is the possibility that law does not yet offer a remedy for the breach of a no-haggle promise because it is sensitive to third-party effects. It may be that a given buyer, B1, welcomes the seller, S's, offer of a no-haggle process. B1 sees himself as a disadvantaged negotiator and prefers to state a price; if S rejects it, the parties are done with one another because S knows that even if B1 returns with a higher price, S faces a net sales price equal to the one S recently rejected. The problem is that other buyers will find their negotiation positions somewhat weaker. Imagine such a buyer, B2, who haggles and then receives an offer from S to proceed under a no-haggle agreement. B2 declines the offer and continues to bargain over price. When B2 says: "I'll pay 84 and not a penny more," B2's words are a weaker signal than they would be if S had not offered, or not been able to offer, a no-haggle agreement with bite. S will reason that if this really were B2's highest offer, then B2 would have agreed to the no-haggle process in order to motivate S. The proposed remedy for breach of the no-haggle

[10] ERIC POSNER, CONTRACT LAW AND THEORY 208-11 (2011) (explaining that courts enforce reasonable covenants not to compete); FARNSWORTH, CONTRACTS §5.3 (discussing standards that courts use to evaluate covenants not to compete).

[11] RESTATEMENT (SECOND) CONTRACTS at § §356 (stating that stipulated damages must be "reasonable in the light of the anticipated or actual loss caused by the breach and the difficulties of proof of loss").

agreement, or simply the proposal that no-haggling be an immutable contractual term, serves to sort a group of previously undifferentiated buyers into two groups. It is not obvious whether the new equilibrium that will emerge is socially more desirable, especially where it is created by law rather than by an enterprising seller.[12] Roughly speaking, B1 may be better off and B2 worse off because of this change in law. S seems better off, having chosen to make the no-haggle offer, though there is also the question of whether sellers are now bifurcated, as buyers learn something from a seller's decision whether or not to offer the no-haggling term.

IV. Existing No-Haggle Mechanisms

The most common no-haggling arrangements are of course those established by repeat players. Most department stores, common carriers, and movie theaters are able to offer different prices to various subsets of buyers, but it is difficult if not impossible for individual buyers to make offers. In contrast, Priceline.com offers consumers the option of bidding, or simply making an offer to an array of sellers, for a flight, rental car, or hotel room. The bidder enters a price, as well as credit card information, and commits to a purchase if any vendor satisfying the stated parameters (such as a car of a certain size, or a hotel room with a certain rating and general location) agrees to the price. The putative buyer cannot simply begin at a very low price and go up in steps because, following a rejected bid, the buyer is locked out from rebidding for the same itinerary for 24 hours. There is a technical sense in which this is a no-haggle process, but in reality it is all haggle, though impersonal; the buyer aims to see how low a price he can obtain, and the sellers respond based on their assessments of demand and their own inventories. Sellers do not attempt to identify buyers who will promise not to buy the item in question

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[12] On signal sorting, *see* ERIC POSNER, LAW AND SOCIAL NORMS 18-27 (2000) (sorting good types and bad types of actors). Imagine, for example, a set of taxpayers who do not like the uncertainty of future audits. They would prefer a system in which one could insist on an audit upon filing a tax return and then either owe money or receive a guarantee that the tax return was accepted and no further money would be owed the government. With such an option in place, the government might then know to devote additional resources to auditing those who chose not to avail themselves of the new quick-and-certain audit option. In turn, some taxpayers who would not have chosen the new option will find it worthwhile to choose it. In the end, it is unclear whether the sorting produces a social gain. For an argument in favor of such a scheme, sorting taxpayers by their willingness to cooperate with enforcement, *see* Alex Raskolnikov, *Revealing Choices: Using taxpayer Choice to Target Tax Enforcement*, 109 COLUM. L. REV 689 (2009).

at a higher price. Again, we could imagine such an agreement, but at present there is no prospect of enforcement. Indeed, there is no reason to think that the intermediary, Priceline.com, shares information about the buyer's past bidding activity or buying inclinations. The bidding buyer is looking for a seller eager to sell at a low price, and the bidder does not reveal much about his own reservation price. Sellers have not developed a mechanism for distinguishing between strategic and revealing buyers. Only a rare bidder would be willing to turn over credit card and GPS information in order to show that, once his bid was rejected, he did not travel to the stated location or rent another hotel room at a higher price. Absent that information it is difficult for buyers to make convincing no-haggle promises.

In the business model popularized by Priceline, no-haggling is enforced online by the software; the buyer is frozen out of the bidding process for a day, though of course it is possible to bid again from a different Internet Service provider address and with another family member's name and credit card. Modest transaction costs serve to keep the sellers' reservation prices hidden, though less so than in most retail transactions, so that buyers do not obtain the entire surplus. In other, familiar settings, sellers try to signal their reservation prices, or promise not to price discriminate, by guaranteeing that they will not be undersold – even by themselves. A buyer who purchases at 85 and then finds that this (or another) seller sold to another, or advertised the good, at 73, within a specified period, is also entitled to return and collect 12. With respect to some goods, sellers can simply promise that goods may be returned for a full refund, so that the buyer can begin again, or take advantage of a better price offered by the same or another seller. A repeat seller is thus able to make a credible promise about pricing. In contrast, the occasional buyer finds it more difficult to do so. Our proposal is designed to allow the seller to draw in the occasional buyer to a mutually satisfactory no-haggle agreement. It makes little difference whether the buyer reveals his reservation price, or simply is strategically attempting to obtain a lower price.

A repeat player can develop a reputation for no-haggling, and even for episodic no-haggling, without any change in law. Imagine, for example, that the seller is a repeat player, and the buyer an occasional participant, unlikely to be known to the seller. Such sellers have developed means of credibly communicating that their *own* promises are not subject to further bargaining. Thus, a seller might simply develop a reputation for never budging from its listed price, and from denying its agents the ability to do so.[13] Many large retail establishments fit this description, and the no-haggle norm is maintained even

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[13] *Cf.* Douglas G. Baird, *Commercial Norms and the Fine Art of the Small Con*, 98 MICH. L. REV. 2716, 2724 (2000) ("Unsophisticated consumers are often better off in a market in which no one can bargain for special terms than in a market where everyone can.").

as the seller is free to announce "sales," or periods when prices are reduced to a new, but also no-haggle, level. Similarly, a seller might link prices to a specified external, market price, so that haggling is out of the question. More interesting, repeat, professional sellers, are often constrained by the law of misrepresentation or fraud, and can therefore make credible promises in order to attract buyers who do not wish to haggle.[14]

Imagine, for example, a dealer in appliances who says "I offer this refrigerator at 100, and I know you are hesitating because you expect a holiday sale to produce price reductions next week. I want you to feel comfortable buying from me today, so I promise you that there is no sale forthcoming, and that I will not budge from this price of 100." B has reason to think that S is truthful because if a sale does materialize, B need only show that it was planned, perhaps by pointing to advertising arrangements made by S, in order to bring a claim against S for misrepresentation. In anticipation of this, or simply to reassure buyers, S will often make a promise of the following kind: "If I do lower prices within the next two weeks, I promise that I will refund the difference to you, so that you will lose nothing by buying today at 100. If, for example, I offer to others at 90, I will simply give you 10." The promise is enforceable inasmuch as B's patronage is regarded as an acceptance that rounds out a mutual bargain. Alternatively, law might simply say that B's reliance on S's statement was reasonable. Note that this approach is superior to one that tries to make enforceable a promise by S not to lower prices. Most buyers will prefer that the seller be free to lower prices later on and, in any event, competition law might frown on such a promise.[15]

Sellers do sometimes say "this is a one time offer," and that sort of a no-haggle promise requires a remedy if it is to be believed, as some sellers and buyers surely wish, ex ante. Imagine that S makes such an offer, perhaps in the form of "today, only," of 95. If B1 declines to buy, and then discovers the same seller later on offering to sell at a price below 95 – B1 will hardly complain. If, however, B2 bought at 95 in stage one, perhaps in a rush and with the understanding that S's offer would not be repeated, then B2 arguably has a claim because S misrepresented future prices. If B2 can collect, even though B1 cannot, S's original promise is credible to all buyers. But imagine instead that S's breach, if it is that, comes about because S offers at 95 later on, rather than at a reduced price. The "today only" promise was broken, but not by a lower price. B2 has no conventional remedy, but perhaps S has not haggled. If some buyers are attracted to no-

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[14] FARNSWORTH, *supra* note 10, at §4.9-15 (describing misrepresentation and reliance in contract law).

[15] *See* Note, *Leegin's Unexplored "Change in Circumstance": The Internet and Resale Price Maintenance*, 121 HARV. L. REV. 1600 (2008) (explaining courts' treatment of resale price maintenance).

haggle promises because they are pressed for time or because they do not want to be disadvantaged in comparison with other buyers, then we might understand S's promise to be something like: "I promise not to haggle over prices today, but tomorrow's prices could be higher or lower than this 95." On the other hand, the seller may wish to attract buyers who do not wish to be disadvantaged by the seller's superior knowledge of future prices. B2 may value the option of deferring a purchase, and B2 knows that option is worth less if S credibly promises that future prices will not be below 95.

Whether or not any buyer could obtain damages in the event that S does lower prices, there are situations that test the meaning and value of no-haggling. If S says "buy now, on Saturday, because I am raising prices on Monday," and then does not raise prices, a Saturday buyer has lost only the option value of waiting. S might have lowered prices before Monday or, more plausibly, the buyer might have found another seller with lower prices. The buyer was pressured into action by S's statement and, in turn, if there is no remedy for loss of option value, then sellers who really will raise prices in the near future have no easy way of credibly encouraging today's buyers (assuming the seller wants the sale today, and assesses it as unlikely that the buyer will return on Monday and pay the higher price). Inasmuch as these examples will seem trivial to most readers, especially where the seller has a reputational interest and other sellers carry the same product, we do not pursue the matter, except to note that if our proposal is accepted, then it is necessary to define a no-haggle term. It might be taken to mean: "If you accept this term and state a price, I will accept or reject it immediately, and then be liable for damages (the difference between an eventual sale price to you and the amount now stated) if I reject now but sell to you at a lower price within the next week." Some sellers might instead venture "universal no-haggle agreements" in which the promise extends to sales made to any customer within the next week. Of course, the time period can be varied as well.

V. Further Applications

We have seen that where a repeat player anticipates several sales to occasional buyers, the seller will find it relatively easy to promise a no-haggle environment, at least if no-haggling is narrowly, rather than universally, defined. The remedy developed in this Essay is more useful when there is a single or unique item for sale and the parties are non-repeat players. In a conventional bargain over real estate, for instance, the seller or the buyer might want to signal a reservation price, or at least the fact of a "final offer." In this setting, the occasional buyer may be unable to avoid the negotiation game. The seller can avail herself of our method, promising a no-haggle process in which the buyer states a price and the seller then accepts or rejects; if the seller rejects and then later sells to this buyer at a higher price, the seller owes the difference. In some settings this process will be unattractive to the parties because reservation price is a time-sensitive and information-sensitive concept. S may ask 100 and truly be unwilling to accept less than 99, but B, with a reservation price of 90, may hope that if no higher bids materialize, S will reassess the market and eventually lower her price, perhaps even below 90. S might want to move B off that 90 position with a no-haggle offer of the kind we have suggested, but S can just as well say: "I will sell you the property for 99, and you have one week to decide whether to accept this offer." It is doubtful that S or B would be attracted to a no-haggle term of longer duration.

Return policies do not, of course, involve haggling over price, and the example suggests that fairly familiar no-haggling terms might be better understood by way of a theory about promises not to bargain quite generally. Inalienability is a still larger category, and explanations for that legal limitation on bargaining in some situations seem unhelpful in understanding why parties might benefit (or not) from a promise not to bargain, or bargain further, over something that is normally subject to negotiation. Consider, for example, an employer that promises its employees: "Anyone who asks for a raise will be fired, and never hired in the future," or a suitor who declares: "Marry me now under the terms I have just set out, or I will never ask you again." In the event that either of these no-haggle promises is breached, there is no remedy. The employee (or object of affection) has no claim if hired (or proposed to), and there is no viable third-party beneficiary claim by another. In turn, the original no-haggle promise is unconvincing, though it might be useful to both parties. It is possible that these parties could use third parties to enhance the credibility of their no-haggle promises, but it is unlikely that our device would be helpful, or even accepted by courts as immutable. Our analysis and proposal regarding no-haggle agreements is best limited to bargaining over a price term.

Perhaps the most obvious terrain for no-haggling innovations is where parties cannot simply walk away and deal with others. Settlement negotiations before and during trials, as well as bargaining between the parties to an expiring labor contract, are familiar haggling fields. In both settings there are time constraints, and the lack of information about reservation prices often leads to brinkmanship. The time constraint can be understood as a "natural" no-haggle term. A labor negotiation, for example, might end in a flurry of activity as an existing contract comes to an end; earlier offers on both sides are not taken seriously. The two sides might slowly work out workplace safety issues and various fringe benefits, both because some of these terms are not zero-sum and because they are too intricate for fast-moving change at the very end. Among other things, all union members want higher wages, but other contractual terms might involve bargaining and coalition building among subgroups. Serious offers about the wage term might be left for the last moment, when a strike or lockout looms, so that there is a cost to further haggling or posturing. This is not a guarantee that reservation prices are revealed at the last moment, but it is suggestive of the benefits of a no-haggle agreement in more ordinary contracts.

In most cases the parties will benefit if they can avoid the costs of a trial or strike, but in many of these cases those costs are insufficiently lumpy to change the game in dramatic fashion. Settlement is possible after one day of a trial, and then after another day, so that parties might bluff and feint on the eve of each day. There must be situations, and perhaps these comprise the overwhelming majority, where each side hesitates to reveal a reservation price or better offer because it fears that this is merely a sign of weakness, and that the other side is not yet ready to reveal, or to share the gain from avoiding the trial or strike. The obvious question is whether a no-haggle process can serve the parties interests. We can imagine such a process in which one party says: "Let's try to settle. In order to encourage you to make your best offer, I suggest that you might want to agree to a no-haggle process. If you do agree, then we will toss a coin and whoever wins that toss must accept or reject the next offer made by the other party. If this final offer is rejected, then we cannot come to an agreement for another 30 days. If we settle anyway during that period, then the winner (of the coin toss) must pay so that the loser obtains the very result offered and rejected soon after the no-haggle process was agreed upon." If parties can be expected to make very unattractive offers when thrust by the coin toss into the unfavorable position of stating a price, then the original offer can include a payment for the right to accept or reject, which is to say to go second.

If this process works, in the sense that it is found attractive by many parties to litigation, or to labor contracts, then it might be unclear whether it succeeds because of the lumpiness introduced by the 30-day waiting period or because it offers an alternative to haggling. If the waiting period is reduced to a day, haggling will simply continue because one can wait a day and then haggle, even after agreeing to a no-haggle process. The longer the waiting period – including a term that essentially precludes settling for the entire length of the trial – the more likely it is that courts will not support the innovation because they will think, perhaps correctly, that it discourages settlements.

Readers with comments should address them to:

Professor Saul Levmore
s-levmore@uchicago.edu

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