

Negotiation: Theory and Practice
LAW 7707S-602
Class Syllabus
Spring 2015
Texas A&M University School of Law

Professor Cynthia Alkon

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Office Hours: Tuesday & Thursday: 2:30 -4:00pm

Office Hours and Conferences:

I have an open door policy. If my office door is open, please feel free to come in and talk with me. If you would like to set up a specific time to meet, please let me know and we will arrange a meeting. The best way to reach me is via email. I do not receive messages left for me on my office telephone, so please do not leave messages and instead send me an email at either of the email addresses listed above.

My office hours this semester are also listed above.

Course Overview:

This course offers students the opportunity to further develop their negotiation skills. It will focus on simulations and negotiation exercises intended to give students first-hand experience in applying interest-based negotiation techniques. The course examines the skills, constraints, and dynamics of negotiation. Students will also learn a theoretical framework for understanding negotiation practice in a variety of contexts through readings from the fields of law, psychology, business, and communication.

Learning Objectives:

By the end of the semester you should

1. understand the theories underlying different types of negotiations and the use of different skills including different styles.
2. understand the difference in duties and skills when negotiating directly as a party as compared to negotiating as lawyer (an agent) for a party.
3. be able to distinguish between integrative bargaining and distributive bargaining.
4. be able to use basic integrative or distributive negotiation skills depending on the situation and which type of skill better meets the individual needs of the

- client/party that you are representing.
5. understand different negotiation styles and when one style may be better to use than another on behalf of your client.
 6. understand the ethical rules applicable to lawyers when negotiating.
 7. be able to recognize barriers to negotiation and analyze what options may overcome those barriers.
 8. have a basic understanding of how to negotiate in a multi-cultural environment by recognizing how gender, ethnicity, and culture may impact particular negotiations.

Course Web Site:

This course will use a course web page through the Texas A&M eCampus system (<http://ecampus.tamu.edu>) (hereinafter eCampus). You will find it listed as “Negotiation Theory and Practice Practicum.” The syllabus and other class materials will be posted on this site.

I will regularly send e-mail messages to the e-mail account that you use with Texas A&M (the same account that is on the Howdy system). It is your responsibility to check this account regularly (at least once a week) and to make sure that the account remains functional and to ensure that you have read any messages that I may send to you on that account.

Required Books:

CARRIE MENKEL-MEADOW, ANDREA KUPFER SCHNEIDER & LELA PORTER LOVE, NEGOTIATION: PROCESSES FOR PROBLEM SOLVING, 2D EDITION (ASPEN 2014). Hereinafter referred to as the text.

ROGER FISHER, WILLIAM L. URY AND BRUCE PATTON, GETTING TO YES, NEGOTIATING AGREEMENT WITHOUT GIVING IN.

Grading:

I will base your grade on classroom participation, exercise summaries, your film presentation, and peer evaluation. There is no final examination in this class.

1. **Classroom Participation:** You can earn a total of 75 points for class participation. Grading is based on whether you contribute to classroom discussions; whether that contribution indicates that you have read the assigned material; your active participation during all exercises; and your overall attendance. You will not be graded on the “outcome” of individual negotiations, but rather by the process you use including whether you suggest creative solutions to the legal and other problems the exercises ask you to solve. You will be graded on how prepared you are (both in terms of doing the readings and preparation for individual exercises). Preparation includes turning in the negotiation preparation

sheets and the scores from the Thomas Kilman (see Week 1) and the Listening Assessment (see Week 2). You will also be graded on your improvement over the semester. Throughout the semester you will participate in exercises. Many of these require partnering up in advance of the exercise. Therefore, if you will be absent on any particular day it is your responsibility to notify the professor as far in advance as possible so alternative assignments can be made. Attendance matters in this class because so much of the learning is experiential, which means you need to be both present and actively participating for a good classroom participation score.

2. **Exercise Summaries:** You can earn a total of 100 points for the Exercise Summaries. You are required to complete **ten** summaries during the semester, including the email negotiation summary. The summaries are due on the days noted below in the syllabus (almost every week beginning on **January 26, 2015**). Each summary must be a minimum of two pages or a maximum of five pages (in 12 Point Times New Roman, double spaced). Each summary is worth up to ten points. The summary must be turned in by 4:30 pm on the day that it is due. One point will be deducted for each day the summary is late (beginning at 4:31 pm on the day it is due). **The summary must be given in hard copy in class and not sent via email.**¹ This applies to all summaries except the one due on May 5, 2015 which should be turned in *via email* to calkon@gmail.com

The ***required format*** for the exercise summaries is at the end of this syllabus. Please note that the format changes for summaries 4-10.

Note: during weeks when there are multiple exercises you may choose which exercise to summarize. If you are absent on a day when an exercise is conducted you are required to interview at least three of your classmates about the exercise and write a summary of their experiences and conclusions following the standard exercise summary format. This means you should discuss what they did, what parts of the reading would have been helpful to you (or not) if you had been present for the negotiation, what your classmates learned from the experience and you should also discuss what you have learned from them about what they would do differently and what this means to you regarding how you would approach a similar negotiation in the future. This should also be two to five pages long. Only one interview summary in lieu of an exercise summary will be accepted during the semester.

3. **Film presentation:** You can earn 25 points for your film presentation. You will present a short film clip to illustrate the reading on the day you are assigned. The film clip can be from a motion picture, a TV program, or a clip from You-Tube (or any other internet source). The maximum length for the clip is 3 minutes. In

¹ Exceptions may be made to this, and email summaries accepted, if you have good cause for such an exception. If such a situation arises, you should email me in advance of class and state the reason and ask for an exception.

presenting the film clip you should explain, or elicit from the class through discussion lasting a maximum of 7 minutes, how it is relevant to the topic of the day. A list of dispute resolution related films is available on eCampus. You can pick something from the list or use something you find on your own that is not listed. The only requirement is that the clip is related to some aspect of the reading for the day in question. You also must turn in a written summary of the film clip, why it is relevant, and what point or points you think it illustrates. This summary should be turned in on the day you present and should be one to two pages in length (with 12 pt. Times Roman type, double spaced).

4. **Peer Evaluation:** You can earn up to 35 points from your peer evaluations. Towards the end of the semester you will be asked to evaluate your peers for their level of preparation for negotiations, their skill, and whether you consider them to be ethical negotiators. Your total points in this section will be determined by averaging the scores you receive from your peers. I reserve the right to discard questionable evaluations.

Attendance and Class Participation:

You are required to attend all classes. The Law School has a mandatory attendance policy. Pursuant to that policy, any student who misses more than **25%** of classes will be withdrawn from the class. Tardy arrivals or early departures may be considered absences.

Please note, as stated above, that a significant portion of the grade in this class is from class participation. If you miss classes you are not participating and that will have an impact on your final grade.

Occasionally, I may need to schedule a make-up class during one of the official make-up times. I will announce the make-up class at least one week in advance. Attendance will be taken at make-up classes.

Disability Policy:

Texas A&M School of Law adheres to a disability policy that is in keeping with relevant federal law. The law school will provide reasonable accommodations as determined by the Assistant Dean of Student Affairs, Rosalind Jeffers, in consultation with the University's disability services. Students must notify Dean Jeffers of any permanent or temporary disabilities and must provide documentation regarding those disabilities prior to the granting of an accommodation. Due to the law school's policy of testing anonymity, students should not discuss their disabilities with professors. For assistance, students should consult with Dean Jeffers.

Laptop Computers and Cell phones:

To be a good negotiator you need to be a good listener and be focused on what is happening at the moment. In an effort to aid the improvement of these skills, and to be considerate of your classmates, the use of laptop computers, iPads, or any other electronic

devices, including any device that allows you to access the internet or make recordings, are prohibited in this class. You are also not allowed to use cell phones in this class unless you have asked me before class and I have given permission for you to use your cell phone. I will grant permission only for specific and legitimate reasons. The only other exception to the laptop and cell phone policy will be for those with prior permission from the Assistant Dean of Student Affairs.

Otherwise your cell phones and all other electronics should be out of sight and turned off or in silent mode during the class. I reserve the right to deduct 5 points from your grade each time I see you use any electronic device, including a cell phone. I will not give you a warning.

Academic Integrity and Policy:

I expect all students to follow the Aggie Honor Code at all times in this class and in any assignments for this class. Under the Aggie Honor Code “An Aggie does not lie, cheat or steal, or tolerate those who do.”

You can see the full statement of the honor code and rules and procedures if it is violated on TAMU Law School Website: <http://aggiehonor.tamu.edu/RulesAndProcedures/>

I will treat any violation of the policy seriously and in a manner that complies with the stated policy.

Professionalism:

As we will discuss throughout this class, good negotiators rely on developing and maintaining a good reputation, including a reputation that you are highly professional. As future lawyers, I expect you to be professional at all times in class and beyond. The demands of professionalism do not end at the classroom or the courthouse door, but extend to how you treat your colleagues, your professors, your eventual clients, and to how you handle your in-person and electronic communications.

“What does it mean to be a professional? The term refers to a group . . . *pursuing a learned art as a common calling in the spirit of public service* – no less a public service because it may incidentally be a means of livelihood. *Pursuit of the learned art in the spirit of public service is the primary purpose.*’ *Dean Roscoe Pound.*”²

“What is professionalism? ‘Professionalism is conduct consistent with the tenets of the legal profession as demonstrated by a lawyer’s civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rule of law, the courts, clients, persons who work within the legal profession, witnesses, and

² . . . *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*” at 10 (ABA 1986) [hereinafter *In the Spirit*] (emphasis added) (citation omitted), available at http://www.abanet.org/cpr/professionalism/Stanley_Commission_Report.pdf.

unrepresented parties.”³

Class Schedule and Reading Assignments:

Week 1: January 12 & 14: Introduction, basics of interest based negotiation

Required reading for Class on January 12:

GETTING TO YES (please make your best efforts to read it in full before class).
Text pages 3-39.

For Class on January 14:

Complete the *Thomas Kilmann Conflict Mode Instrument* and have your score calculated before class begins (this is available on eCampus as “Week 1 Additional Required Reading”). You will be required to turn in the scoring sheet portion, so please be sure to print that out and fill it out before class.

Week 2: January 21: Working with Your Client: Preparing for Negotiation by Learning and Listening Through Interviewing and Counseling

Required reading:

Text pages 41-77

BINDER ET,AL, LAWYERS AS COUNSELORS: A CLIENT CENTERED APPROACH, pages 247-268. This will be available on ECampus as “Week 2 Additional Required Reading.”

Complete Listening Assessment Test before class on the 21st. This will be available on the Web Course. You will be required to turn in the scoring sheet portion, so please be sure to print that out and fill it out before class.

Optional Reading: Active listening checklist: This will be available on the Web Course.

- Make sure you have filled out the Week 2 Negotiation Planning Document (on eCampus) in advance of your negotiation (you will be asked to turn it in).

³ Commission on Professionalism, State Bar of New Mexico. Available at: <http://www.nmbar.org/Attorneys/commissiononprofessionalism.html>

Note: You will need to complete an out-of-class exercise by January 21. This exercise will count as a make-up class for the class we will miss on April 15. Please plan your schedule accordingly.

Week 3: January 26 & 28: Preparing Your Case and Persuading Your Counterpart

Required reading:

Text pages 79-114

Professional Emails, available on the Web Course as “Week 3 Additional Required Reading.”

- Make sure you have filled out the Week 3 Negotiation Planning Document (on eCampus) in advance of your negotiation (you will be asked to turn it in).

1st Exercise Summary Due on January 26.

Week 4: February 2 & 4: Integrative Negotiation: Expanding the Pie and Solving the Problem

Required reading:

Text pages 117-160

- Make sure you have filled out the Week 4 Negotiation Planning Document (on eCampus) in advance of your negotiation (you will be asked to turn it in).

2nd Exercise Summary Due on February 2nd.

Week 5: February 9 & 11: Distributive Bargaining: Dividing the Pie, Mixed Models, and Choosing Your Approach

Required reading:

Text pages 161-201

Andrea Kupfer Schneider, *Teaching a New Negotiation Paradigm*, 39 WASH. U. J. L. & POL’Y 13 (2012)--abridged version available on eCampus as “Additional Week 5 Required Reading.”

- Make sure you have filled out the Week 5 Negotiation Planning Document (on eCampus) in advance of your negotiation (you will be asked to turn it in).

3rd Exercise Summary Due on February 9.

Week 6: February 16 & 18: Working with your client: As Counselor and an Agent,

Required reading:

Required reading:

Text pages 203-231

- Make sure you have filled out the Week 6 Negotiation Planning Document (on eCampus) in advance of your negotiation (you will be asked to turn it in).

4th Exercise Summary Due on February 16

Week 7: Feb. 23 & 25: Relating to Your Counterpart: Information Exchange, Trust, Apology, Reputation, and Power

Required reading:

Text pages 233-272

5th Exercise Summary Due on Feb. 23.

Week 8: March 2 & 4 : Working with Your Counterpart: Understanding and Emotions

Required reading:

Text pages 275-313

6th Exercise Summary Due on March 2.

Week 9: March 16 & 18: Recognizing and Responding to Barriers in Negotiation

Required reading:

Text pages 315-351

Elizabeth L. Jeglic & Alexander Jelic, *Negotiating with Disordered People*, NEGOTIATION FIELDBOOK, pg 335-341. This will be available on eCampus as “Week 9 Additional Required Reading.”

7th Exercise Summary Due on March 16.

Week 10: March 23 & 25: Dealing with Differences: Culture, Gender, and Race

Required reading:
Text pages 353-389

Note: If you miss class during week 10 or week 11, there will be an automatic point deduction. Please plan your schedule accordingly.

Week 11: March 30 & April 1: Dealing with differences: culture, gender, and race

Continued.

Note: If you miss class during week 10 or week 11, there will be an automatic point deduction. Please plan your schedule accordingly.

Week 12: April 6 & 8: Ethics in Negotiation

Required reading:
Text pages 393-429

8th Exercise Summary Due on April 6.

Week 13: April 13 & 20: Multi-party negotiations

Required reading:
Text pages 469-508
ROGER SWARTZ, THE SKILLED FACILITATOR: PRACTICAL WISDOM FOR DEVELOPING EFFECTIVE GROUPS, pages 75-86, 146-157 and 191-209.
This reading will be on eCampus as “Week 13 Additional Required Reading.”

Note: There will be no class on April 15. The make-up class will be early in the semester (during week 2). We will conduct the negotiation for this week during the entire class period on April 13 and discuss it on April 20th.

Week 14: April 22 & 27: Plea Bargaining

Required reading:
G. NICHOLAS HERMAN, PLEA BARGAINING, pages 407-495. This reading will be on eCampus as “Week 14 Additional Required Reading.”

Adam Liptak, “Public Defenders Get Better Marks when on Salary,” NY Times, A1, July 14, 2007. Please look this up.

9th Exercise Summary Due on April 27.

*May 5: 10th Exercise Summary Due. Please turn this in via e-mail to:
calkon@gmail.com or calkon@law.tamu.edu*

Exercise Summary
Required format for Exercise Summaries 1-3

Name:

Date of Exercise:

I. Summary: Describe what happened including the outcomes, if any **(2 points)**.

II. Describe how what you did was influenced by the readings. If the readings did not influence or change how you acted during the exercise, explain why. **Please cite to specific parts of the assigned reading for the week. (4 points)**

III. Describe what you would do differently if you had it to do over again and why. (4 points)

Exercise Summary
Required format for Exercise Summaries 4-10

Name:

Date of Exercise:

I. Summary: Describe what happened including the outcomes, if any (**2 points**).

II. Describe how what you did was influenced by the readings. If the readings did not influence or change how you acted during the exercise, explain why. **Please cite to specific parts of the assigned reading for the week. (4 points)**

III. Describe what skill level you reached (from the New Negotiation Paradigm) including what you would do differently if you had it to do over again and why. (4 points):

- **Your analysis should include each of the five skills: assertiveness, empathy, flexibility, social intuition, and ethicality.**