

Spring 2015
Multiparty Conflict Resolution in Energy and Environmental Matters
LAW 379M; UNIQUE 28700
Thursdays, 3:45 -6:15 PM
TNH 3.127

Professors Menicucci and Schwartz

Office: TNH 4.119

Contact: Prof. Schwartz: 512-232-1194; sschwartz@law.utexas.edu

Prof. Menicucci: 512-894-5426; MMenicucci@braungresham.com

Office hours: Generally, our office hours are Thursdays from 1:30-2:30. Please e-mail or call ahead to make sure we will be available, as other work-related commitments may take us out of the office. We also are happy to meet at other times by appointment. For an appointment, contact one of us at the above phone numbers, or send us a message via Canvas or via email.

COURSE SUMMARY

Energy development, natural resource use and environmental cases often involve complex legal, technical and policy-related issues, affecting multiple parties. Resolution of conflicts may require coordination of multiple governmental authorities. Using judicial and quasi-judicial mechanisms to resolve conflicts in these situations can be slow, costly, and result in only a partial resolution of the matter. Through alternative, negotiation-based methods of conflict resolution, parties may develop durable agreements that enable a project to proceed or a natural resource to be appropriately used or restored. This course explores the unique nature of multiparty conflicts, develops negotiation and process skills, and examines how lawyers can best assist clients in such complex matters. Students will analyze and use case studies involving environmental, natural resource, or energy development issues both to gain a better understanding of the nature of these conflicts and the mechanisms for moving parties toward functional solutions.

This course is included in the curriculum for the Center for Energy, International Arbitration, and Environmental Law. It also satisfies the theory and/or skills course requirements of the interdisciplinary Portfolio Program in Dispute Resolution. It is open to law students, LLM students, and graduate students from other disciplines. Any of the following Law School courses would be helpful, but none are required as a prerequisite for this course: ADR survey course, negotiation course or mediation course.

The class will meet occasionally outside of the normal class period in order to conduct a more extensive negotiation. Dates will be determined during the first two weeks to allow students to adequately plan.

COURSE MATERIALS

- Roger Fisher, William Ury, and Bruce Patton, Getting to Yes: Negotiating Agreement Without Giving In (3rd ed. 2011)
- A supplemental packet of required reading materials through UT Copy Services
- Supplemental materials made available on Canvas

COURSE OBJECTIVES

- Students understand the nature of multiparty conflict resolution, analyzing, in particular, conflicts in environmental and energy matters.

- Students understand the various tools for conflict resolution in situations with multiple parties and interests.
- Students analyze the lawyer's unique role in participating in the non-judicial resolution of multiparty conflicts.

ATTENDANCE AND COURSE REQUIREMENTS

Attendance: Attendance will be taken at each class. Students are expected to attend classes and participate in discussions. This course involves several negotiation exercises, some with assigned roles. Because these exercises are multiparty events, a student's absence can adversely affect the entire group. If an absence is unavoidable, students should contact the professors regarding any absences in advance of the class, so that arrangements can be made to adjust the exercise. **During the first class, we will discuss and schedule dates and times needed to meet outside of the regular class period to complete more extended negotiations.**

Course Requirements:

- Students are expected to complete assigned reading materials before the class meets.
- Class preparation and participation will be a component of the student's final grade. The outcomes of the negotiations will not be factored into students' grades, but preparation for and active participation in the negotiation will be part of the Class Participation component of the grade.
- Confidential material is contained in roles students may be assigned in negotiation exercises. This material must be kept confidential, in order to ensure the success of the exercise.
- Students will receive several written assignments (including the analysis of a case study). Some assignments are to be completed independently and some in groups. These assignments will also be a component of the student's final grade.
- There is no final test in this course.

GRADING

Grades will be based on the criteria in the following table. *Late submissions may be penalized with a lower grade: The deadlines and instructions for submitting assignments are listed on the syllabus portion of this document.*

Assignment	Description	% of Grade
Written Assignments	Completion of three individual written assignments. Assignments will be evaluated based on quality of the written assignments, with consideration given to: <ul style="list-style-type: none">• organization: logical development of issues and ideas, appropriate conclusions;• quality of writing; and• content and analysis: how well does the paper respond to the prompt and reflect class discussions and reading.	45%
Class Participation	Active participation in class discussions and negotiation exercises. Class participation will be evaluated based on preparation for class and active participation in class discussions and negotiation exercises.	20%
Group Projects	Development and presentation of a case study. Assignments will be	35%

	<p>evaluated based on quality of the case analysis and presentation, with consideration given to:</p> <ul style="list-style-type: none">• organization, including logical development of issues and ideas, and appropriate conclusions;• quality of writing;• content and analysis: how well does the paper respond to the prompt and reflect class discussions and readings; and connection of case study to key concepts of multiparty conflict resolution; and• class presentation.	
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

We remind you that law students are bound by the University Honor Code and by the following [Honor Code](#):

The study of law is an integral part of the legal profession. Students engaged in legal studies should learn the proper ethical standards as part of their education. All members of the legal profession recognize the need to maintain a high level of professional competence and integrity. A student at the University of Texas at Austin School of Law is expected to adhere to the highest standard of personal integrity. Each student is expected to compete honestly and fairly with his or her peers. All law students are harmed by unethical behavior by any student. A student who deals dishonestly with fellow law students may be dishonest in the future and harm both future clients and the legal profession. Under the honor system, the students must not tolerate unethical behavior by their fellow students. A student who knows of unethical behavior of another student is under an obligation to take the steps necessary to expose this behavior. Students in the University of Texas at Austin School of Law are governed by the Institutional Rules on Student Services and Activities. Students may be subject to discipline for cheating, plagiarism, and misrepresentations.

We ask that you notify us in advance if you must miss class, an assignment, or other required activities for the observance of a religious holiday. You will be given an opportunity to complete the missed work within a reasonable time after the absence.

Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 512-471-6259, <http://www.utexas.edu/diversity/ddce/ssd/>.

COURSE SCHEDULE

I. Negotiation Principles and Approaches (Classes 1-2). This course segment will:

- Address the concepts of conflict, conflict management, and interest-based negotiation;
- Develop theories of negotiation;
- Examine the nature of negotiations in the legal environment; and
- Examine conflict resolution in the environmental arena.

II. Multiparty Negotiations (Classes 3-10). This course segment will:

- Examine differences between two-party and multiparty negotiations;
- Explore in further detail the characteristics of complex, multiparty negotiations with a focus on the environmental arena;
- Build an understanding of consensus building skills and processes; and
- Explore the unique role of legal counsel in such complex negotiations.

III. Case Studies, Course Wrap-up (Classes 11-14)

Using case studies, students will work during the semester in groups to apply consensus building and conflict resolution concepts to complex energy, environmental and natural resources cases.

Class # Dates	Topics	<u>Readings & Assignments</u> <i>Materials other than Getting to Yes will be posted on Canvas or available in Supplemental Packet for purchase through UT Copy Services. <u>Instructors may modify reading assignments in this syllabus, including making additional reading assignments.</u></i>
Part I: Negotiation Principles and Approaches		
#1 Jan 22	Course overview, requirements and expectations Understanding and managing conflict Negotiation exercise and debrief Negotiation principles and process	Roger Fisher et al, <i>Getting to Yes</i> , Chapters I-IV (pp. 1-148) <p style="text-align: right;">Assignment: Reflecting on your Negotiations distributed via Canvas. Due at 5 p.m., April 9.</p>
#2 Jan. 29	Understanding your negotiation style Negotiation fundamentals Issues for lawyers in negotiation	<p style="text-align: center;">Complete negotiation style inventory before class.</p> Michael Wheeler, <i>Negotiation Analysis: An Introduction</i> , Harvard Business School Note 9-801-156, (2000). (<i>Supplemental packet</i>) Alex J. Hurder, <i>The Lawyer's Dilemma: To Be or Not to Be a Problem-Solving Negotiator</i> , 14 <i>Clinical L. Rev.</i> 253, pp. 288-300 (2007-2008). (<i>Canvas</i>) <p style="text-align: center;">Group case study assignment distributed. Written component due on April 8. Due dates for other components specified in assignment.</p>
Part II: Multiparty Negotiations		
#3 Feb 5	Fundamental negotiation skills: Questioning, listening, reframing Negotiation exercise & debrief Comparison of two party and multiparty negotiations Preparing for a multi-party negotiation	Robert H. Mnookin, <i>Strategic Barriers to Dispute Resolution: A Comparison of Bilateral and Multilateral Negotiations</i> , 8 <i>Harvard Negotiation L. Rev.</i> (2003). (<i>Canvas</i>) Michael Watkins and Susan Rosegrant, <i>Breakthrough International Negotiation</i> , Ch. 4 excerpt - Identifying Barriers to Agreement. (<i>Supplemental packet</i>)
Feb. 12	<p>No class due to extended negotiation. Consider using the time to work with your group.</p> <p style="text-align: right;"><i>Negotiation role plays distributed.</i></p>	

	<i>Negotiation preparation assignment 1 distributed. Due Feb. 19 before class</i>	
#4 Feb. 19	Guest Lecture Negotiation exercise	<i>Negotiation preparation assignment 1 due before class</i> Michael Watkins and Susan Rosegrant, <i>Breakthrough International Negotiation</i> , Ch 8 excerpt -Building Momentum. (<i>Supplemental packet</i>)
# 5 Feb. 26 Class extended to 7 p.m.	Multiparty negotiation exercise and debrief	Role play distributed prior to class. <ul style="list-style-type: none"> • Students are expected to read the portions of exercise distributed to them in advance and prepare for the negotiation. • Students must keep information for the role play confidential.
#6 Mar. 5	Coalition building & group dynamics Public policy aspects of multiparty environmental, energy & natural resources negotiation How to structure a consensus building process	Michael Watkins and Susan Rosegrant, <i>Breakthrough International Negotiation</i> , Ch. 12 excerpt - Building Coalitions. (<i>Supplemental packet</i>) Public Participation in Environmental Assessment and Decision Making (Thomas Dietz and Paul Stern, eds. 2008): <i>The Promise and Perils of Participation</i> , pp 33-45 and 222-233. (<i>Canvas</i>) Policy Consensus Initiative, A Practical Guide To Consensus (Abbreviated Version) (<i>Canvas</i>) <i>Optional reading on coalitions:</i> <i>James Sebenius, Sequencing to Build Coalitions: With Whom Should I Talk First? pp. 324-348 in Wise Choices: Decisions, Games and Negotiations. (R. Zeckhauser et al. eds. (1996) (Supplemental packet)</i>

<p>#7 Mar. 12</p>	<p>Issue sequencing, building an agenda</p> <p>Addressing science issues in multiparty conflict resolution processes</p> <p>Environmental justice</p>	<p>Kirk Emerson, Tina Nabatchi, Rosemary O’Leary, John Stephens, <i>The Challenges of Environmental Conflict Resolution</i>, pp. 3-26 in <i>The Promise and Performance of Environmental Conflict Resolution</i> (Rosemary O’Leary and Lisa Bingham eds., 2003). (<i>Supplemental packet</i>)</p> <p>Public Participation in Environmental Assessment and Decision Making (Thomas Dietz and Paul Stern, eds. 2008): <i>Overall Conclusions and Recommendations, Integrating Science</i>, pp 233-243 (<i>Canvas link</i>)</p> <p><i>A Dialogue not a Diatribe, Effective Integration of Science and Policy through Joint Fact Finding</i>, Herman Karl, Lawrence Susskind, and Katherine Wallace, 49 <i>Environment</i> No. 1, at 20. (<i>Canvas</i>)</p> <p style="text-align: right;"><i>Extended negotiation roles and negotiation preparation assignment 2 provided at end of class.</i></p>
<p>Mar 19</p>	<p>SPRING BREAK – NO CLASS</p>	
<p>#8 Mar 26</p>	<p style="text-align: right;"><i>Negotiation preparation assignment 2 due at noon.</i></p> <p>Extended Negotiation Begins</p>	
<p># 9&10 April 2 3:45 – 9:15</p>	<p>Extended Negotiation Continues Date and time to be confirmed in first class</p>	
<p>Part III: Case Studies & Course Wrap-up</p>		
<p>April 8</p>	<p style="text-align: right;"><i>Written component of group case study due at 5 p.m. April 8.</i></p>	
<p>#11 April 9</p>	<p>Group case study presentations</p> <p style="text-align: right;"><i>Reflecting on your Negotiations Assignment due at 5 p.m.</i></p>	
<p>#12 April 16</p>	<p>Group case study presentations</p>	
<p>#13 April 23</p>	<p>Group case study presentations</p>	
<p>#14 April 30</p>	<p>LAST CLASS: Group case study presentation if needed Course wrap-up/ <i>evaluation</i></p>	
<p><i>Evaluation of group experience due May 1st 11:59 p.m.</i></p>		