

**SYLLABUS  
MULTI-PARTY NEGOTIATION (790-1005)**

**Prof. Carrie Menkel-Meadow  
William S. Boyd School of Law, UNLV  
Summer Term  
June 11-13, 2015  
9:00 A.M. – 2:00 P.M.  
BSL 105**

**COURSE REQUIREMENTS**

This is a mandatory attendance intensive course, requiring you to be in attendance for every hour of class. You will not receive credit for the course (1 credit) if you do not attend all sessions. The class is an intensive workshop in advanced negotiation, dispute resolution, mediation, consensus building, and facilitation and will require you to play many roles as participants, group leaders, representatives, negotiators, facilitators, mediators and dispute resolvers in a variety of different subject matter areas. The learning of all students depends on everyone being present to perform their roles and to engage in analysis of problems and de-briefings of exercises.

You will be required to write one final paper to be due after the class sessions are over (10 pages). This final paper will ask you to do an in-depth analysis of a current multi-party, multi-issue dispute or problem, or an analysis and critique of one of the class major simulations, utilizing course concepts.

Grading for the course will be based on the following:

**Class participation** (role preparation and performance, quality of class discussion and analysis) = 30%

**Final Paper** = 70%

**REQUIRED READINGS**

**Books (to be purchased):**

- 1. Fisher, Ury and Patton (3<sup>rd</sup> ed.) Getting to YES (Penguin 2011)**
- 2. Susskind & Cruickshank, Breaking Robert's Rules (Oxford Press 2006)**

**Articles and Other Materials (available on course Portal):**

- 1. Menkel-Meadow, et. al. Chapter 13 Multi-Party Dispute Resolution (hereinafter Chapter 13); from Menkel-Meadow, Love, Schneider, & Sternlight, *Dispute Resolution: Beyond the Adversarial Model, 2nd ed. 2011*)**
- 2. Menkel-Meadow, Introduction, in “Multi-Party Dispute Resolution, Democracy and Decision Making,” (Ashgate 2012)**
- 3. Lansky, “Proceeding to a Constitution: A Multi-Party Negotiation Analysis of the Constitutional Convention of 1787,” *Harv. Nego. L. Rev. 5: 279-338 (2000)*.**

**COURSE DESCRIPTION**

This course is an advanced course in negotiation and dispute resolution, focusing on complex modern social and legal problems when there are multiple parties and multiple issues at stake. No prior course in negotiation is required, though it is very desirable. We will read, discuss and use a variety of role-plays and simulations to explore the issues involved in negotiation, coalition building, representation, facilitation, meeting management, mediation, communication, rules of decision, voting, consensus building, drafting agreements, charters, constitutions and documents in groups, and other issues which are presented when multiple parties seek to resolve their conflicts and disputes outside of a conventional bilateral litigation model or when groups of people seek to create new entities, or to negotiate treaties, constitutions, contracts or other agreements.

We will explore underlying theory, including democratic discourse theory, negotiation theory, game theory, social and cognitive psychology, conflict theory, and the practice of different structures and forms of multi-party dispute resolution. We will use experiential learning, through simulations and role-plays, to explore the applicability of the theory and effectiveness of the skills and processes described in the readings and experienced in the course.

This course will also focus on issues of group dynamics and processes of decision. You will learn how to be an effective part of a group (as a participant, advocate, representative and leader) and you will practice leading and managing group processes, an essential part of being a lawyer or effective dispute resolver or manager. Thus, you will learn from being inside group processes and complex conflict situations, as well as standing outside of them to analyze and lead them. In some exercises you will formally be assigned to an observer or mediational role; in others you will be assigned roles of direct participation or representation of constituencies. We will explore the role of lawyers in these different roles.

There are foundational concepts and constituent skills that you will learn – negotiation theories and practices, the dynamics and psychology of group processes, stages of group and coalition development, the evolution of problem framing and solving, conflict and conflict resolution theory, bargaining and game theory, strategic and principled forms of argument and behavior, organizational behavior, and models of leadership and decision making. We will look at these issues through the lens of intercultural and international variations as well. Think of this as a course in collaborative, if sometime contentious, problem solving. You will learn some important life skills, no matter what kind of legal practice you may be entering.

We will be asking you to think about some foundational questions like:

1. To what extent are there “**universal**” **principles of negotiation** behavior and to what extent do such principles or propositions vary with the number of negotiators (bi-lateral vs. multi-lateral negotiations) and the context or subject matter of the negotiation (legal, community, international, diplomatic, commercial, constitutive) as well as the relationships of the parties (one-off, repeat player, temporary ally)? In short, is a “theory” of negotiation separate from a “theory” of n+ parties in negotiation and dispute resolution? **What variables or conditions affect the conduct of negotiations and dispute resolution?**
2. To what extent are there useful propositions about “**process**” **management** in all contexts? In varied contexts? Political philosopher Stuart Hampshire has opined, in the book, *Justice is Conflict*, “[b]ecause there will always be conflicts between conceptions of the good, moral conflicts, both in the soul and in the city, there is everywhere a well-recognized need for procedures of conflict resolution, which can replace brute force and tyranny....The skillful management of conflicts, [is] among the highest of human skills.” But, does the particular form of conflict resolution or dispute management have to be tailored to the substance of the dispute or the particular parties engaged in the dispute or conflict?
3. How do we know when a particular process or outcome is **fair** or **just**? What is the appropriate amount of direct party participation for legitimacy of outcome? When does a consensus builder lose neutrality or legitimacy? What standards should be applied to the work of third party neutrals and other interveners in human conflicts? When should deliberations be transparent and public and can secret or confidential proceedings ever be justified? What is the role of law and rules in assessing the justice or accountability of conflict processes and outcomes? How do “rights” and “democracy” interact?
4. To what extent are our notions of conflict resolution and management **culturally based**? Are they ethnocentric or “universal”? How can competing value and belief systems operate within a conflict process? Can all values be “reduced” to “interests” or can process transcend ideology?

5. At the **skill level**, you should learn to analyze conflict situations and group dynamics, engage in negotiation, facilitation, interventions, mediation, meeting management and collaborative decision making and problem solving. These skills will, in turn, depend on some constituent skills like brainstorming, interest balancing, creativity, interviewing, questioning, persuasion, decision making and general interpersonal competence. Some of you will have natural abilities in these areas, others of you will need to learn these skills in order to develop your craft and improve your judgment. **Theory and experience** (through role plays and simulations in this course) should work together to help you develop these competencies.

6. How do **groups of people** work effectively to **create new entities** (countries, constitutions, charters, organizations) to undertake human problem solving and **governance**? Should such groups have leaders? How should they delegate functions and tasks? What methods of voting or other **forms of decision making** should they use? What are the effects and consequences of choices made about group decision making and governance?

7. How can group negotiation and decision making be **implemented, monitored and evaluated**?

We will work in several different contexts in the course simulations: business, environmental, and governmental dispute resolution to give you some experience with different kinds of multi-party disputes, drawing from both “private” and “public” law issues.

### **DISABILITY RESOURCE CENTER (DRC)**

The UNLV Disability Resource Center (SSC-A 143, <http://drc.unlv.edu/>, 702-895-0866) provides resources for students with disabilities. If you feel that you have a disability, please make an appointment with a Disabilities Specialist at the DRC to discuss what options may be available to you. If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the law school Registrar's office to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course.

## COURSE SCHEDULE AND ASSIGNMENTS

### Read before first day of class:

1. Getting to Yes, Fisher, Ury & Patton, 3<sup>rd</sup> ed. 2011 (all of it)
2. Intro to Susskind & Cruikshank, Breaking Robert's Rules (pp. xi-xvi)
3. Menkel-Meadow, "Introduction" to Multi-party Dispute Resolution, Democracy and Decision-Making (available on the Portal)
4. Menkel-Meadow, Ch 13 pp. 581-592 (available on the Portal)

### Thursday, June 11

<b>9:00-9:30</b>	<b>Course Introduction and Requirements</b>
<b>9:30-10:00</b>	Role of conflict in Society; needs for multi-party dispute resolution
<b>10:00-10:30</b>	Exercise: <i>Emergency Room</i>
<b>10:30-10:40</b>	<b>Break</b>
<b>10:40-12:00</b>	Basic and Multi-Party Negotiation Principles; What's different? BATNA, ZOPA, Coalitions, Consent Measures of Agreement; Hold-outs and Vetoes
<b>12:00-1:00</b>	<b>Lunch</b>
<b>1:00-2:00</b>	<i>Exercise: House of Threads and de-brief</i>
	<b>Distribute Roles for Pristine Lake</b>

### Friday, June 12

<b>9:00-9:30</b>	Discussion of Groups and Coalition Behavior
<b>9:30-10:30</b>	Introduction to Mediation <b>[READ Ch 13 pp. 593-603]</b>  Deliberative Processes; Facilitation <b>[READ Susskind pp. 3-40; 83-113]</b>
<b>10:30-10:40</b>	<b>Break</b>
<b>10:40-12:00</b>	<i>Exercise: Pristine Lake/ De-brief</i>
<b>12:00-1:00</b>	<b>Lunch</b>

**1:00-2:00**

Rules of decision and rules of process  
[**READ Lansky on the Portal**]

**Distribute Roles for Harbor Co.**

**Saturday, June 13**

**9:00-10:15**

Recap of multi-party conflict resolution processes  
[**READ Ch. 13 pp. 606-620; 628-632**]

Comparisons of public/private issues

Consensual/Mandated processes

Groups and Organizations: Permanent/Ad hoc/Constitutive

Bi-lateral/Multi-lateral

Direct, Representational

Decision-making

**10:15-12:00**

*Exercise: Harbor Co.*

**12:00-1:00**

**Lunch**

**1:00-2:00**

De-brief Harbor Co.

Lessons Learned/Wrap-Up: Complex Dispute Resolution

**Final Paper Due**

**Wed. July 1, 2015; email to [cmeadow@law.uci.edu](mailto:cmeadow@law.uci.edu)**

**Paper Instructions provided separately in class**