

NEGOTIATION: Theory and Practice

Prof. F. Peter Phillips
Mondays 6:00 pm - 7:40 pm
Room WA11

Required Texts: *Beyond Winning*, Mnookin, Peppet and Tulumelo
 Getting to Yes, Fisher, Ury and Patton
 Bargaining for Advantage, Shell

The objectives of this course are:

- ✚ to give students practical experience in negotiation;
- ✚ to alert students to principles of negotiation that are designed to yield better outcomes for their clients;
- ✚ to improve students' interactive skills and their powers of perception during the negotiation process; and
- ✚ to prepare students to conduct their practices in a manner that is profitable, ethical and gratifying.

The course has three components. **First**, students will be expected to prepare for each class by reading and critically analyzing certain written materials that will then be discussed by the group. **Second**, students will take part in about a dozen negotiation exercises, either during class or between classes, and offer observations on the style of negotiations and the outcome of the process. **Third**, students will prepare a paper of publishable quality consisting of a critical response to a particular work by a leading negotiation expert.

Students may choose among the following publications for the purpose of this paper.

Kolb and Williams, *The Shadow Negotiation*
Mnookin and Susskind, *Negotiating on Behalf of Others*
Lande, *Lawyering with Planned Early Negotiation*
Fisher and Shapiro, *Beyond Reason*
Stone, Patton and Heen, *Difficult Conversations*
Mnookin, *Bargaining with the Devil*

Students who wish to base the paper on a different book or author may do so with the permission of the professor. The paper should contain a brief and succinct description or synopsis of the main ideas in the book, and then a perceptive, eloquent, creative and critical assessment of the viability of the negotiation theories that are propounded in the book. The paper should be as long as needed to thoroughly address the points made.

Each time a student takes part in a negotiation exercise, the student will complete and submit a journal containing succinct evaluations, observations, and learning “take-aways” from the exercise. The journal may take any form, but must include the following information:

Name of student
Name of negotiating partner
Name of exercise
What the student did well
What the negotiating partner did well
Summary of the outcome
Lessons learned
Other thoughts on the experience
Reputation Index notes (see below)

A Note on Exercises: Each exercise has a factual description that all parties to the negotiation share. Most exercises have confidential instructions for each party, setting forth information that the other party does not know. ***It is of the Utmost Importance That Students Not Share or Disclose Confidential Instructions!*** Lawyers always encounter counterparties – and clients – who are hesitant to disclose certain aspects of the deal or the dispute. It is the purpose of this course to teach you to make decisions with imperfect knowledge in a professional manner calculated to further the client’s interests. Therefore, it is a waste of tuition money to disclose the contents of any confidential instructions, until the professor allows such disclosure during classroom discussion.

Please do not copy the exercise handouts. Please return the exercise handouts to the professor at the next class.

A Note on the Reputation Index: As noted above, students will be asked to maintain a journal containing their reflections on how their negotiation exercises went. In that journal students should submit, on a confidential basis, the names of fellow students who, in the course of their dealings, displayed a level of reliability, propriety, clarity, ethical correctness and honesty that would prompt one to be particularly willing to work with them as negotiators in practice. Students will also submit the name(s) of student(s) (if any) whose course of dealing was unreliable, tricky, duplicitous, or unethical, such that one would seek to avoid negotiating with them in practice. This is the Reputation Index, and the results will affect final grades.

Grades: Grades will be based on (i) the quality of participation in classroom discussions and the negotiation exercises; (ii) the creativity and insight evidenced in the journal entries and the formal paper; and (iii) the level of professionalism, reliability, collegiality and forthrightness that is reported by peers in the Reputation Index.

Syllabus

August 26 Class #1: Course Outline; Skills in Observing and Responding to Negotiation Exercises; Reputation Index; Introduction to Principled Negotiation;

Reading: Fisher pp. 1-94
Mnookin pp. 1-10

Exercise: San Nueve Museum v. City Hall

September 9 Class #2: Determining Interests

Reading: Shell Chapter 5
Mnookin pp. 178-83

Exercise: Shatner and Warner Theater Negotiation

September 16 Class #3: Stages and Styles of Negotiation

Reading: Shell, Chapters 1, 7-10

Exercise: Thomas-Kilmann Inventory (In Class)
Hearing Voices

September 23 Class #4: Creating and Distributing Value

Reading: Mnookin pp. 9-43, 240-48
Craven, *The Inherent Tension Between Value Creation and Value Claiming During Bargaining Interactions*

Exercise: Charles v. New Alamo

September 30 Class #5: What is a Good Outcome? Determining Norms and BATNAs

Reading: Shell, Chapter 3
Mnookin, Chapter 4

Exercise: Allied Industries and CAS

October 7 Class #6: Dealing with Hard Bargainers; Prisoners' Dilemma

Reading: Fisher, pp. 129-43

Mnookin, Chapter 8
Westbrook, *How to Negotiate with a Jerk Without Being One*

Exercise: Win as Much as You Can (In Class)
Black Lab and Blue Ribbon Roses

October 14 Class #7: Negotiating for Others; Negotiation Ethics; Fairness

Reading: Shell, Chapter 11
Mnookin, Chapter 11
Hinshaw, *Teaching Negotiation Ethics*

Exercise: Cubit-Nyquist Negotiation

October 21 Class #8: Negotiation Ethics Cont'd; The Influence of Gender and Race in Negotiation

Reading: Hon, *Anything You Can Do I Can Do Better*
Ayers, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*

Exercise: Parker v. Davidson (In Class)
State v. Davis

October 28 Class #9: Empathetic Listening for Clues to Problem-Solving

Reading: Mnookin, Chapter 2
Peanuts Cartoon

Exercise: Model A

November 4 Class #10: Emotions, Relationships and Commercial Negotiation

Reading: Shell, Chapter 4
Fisher and Shapiro, *Beyond Reason*, Chapters 1 and 2

Exercise: Bowling Ball Manufacturer

November 11 Class #11: Heuristics and Psychological Barriers to Economically Efficient Negotiated Deals

Reading: Mnookin Chapter 6

Exercise: Iraq; Ultimatum (In Class)

November 18 Class #12: Cross-Cultural Negotiation and Alternatives to Interest-Based Bargaining

Reading: Phillips, *Alternatives to Interest-Based Bargaining*
Phillips, *Negotiating with Chinese Counterparties*

Exercise: When Cultures Clash

November 25 Class # 13: Book Reports Due; Multiparty Negotiation

Reading: Mnookin Chapter 12

Exercise: World Trade Center (In Class)
International Roofing

December 6 Class #14: Reputation Index Due Summing Up; Lawyer as Problem-Solver

Reading: Shell Chapter 12
Mnookin 315-23
Fisher p. 148

Exercise: Qatar GE Exercise (In Class)