

BELMONT UNIVERSITY COLLEGE OF LAW
NEGOTIATIONS SYLLABUS – FALL 2013

Instructor Leigh Ann Roberts, J.D., Attorney, Arbitrator & Rule 31 Listed Mediator
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Office hours Adjunct Instructor **Off-site; Office Hours by Appointment Only**
E-Mail LRoberts@PapaRoberts.com
Course credit 2 credit hours
Meeting Location LAW 200
Meeting Dates: Monday afternoons (**First class Sept.9**, 16th, 23rd, 30th, Oct. 7th, 14th, 21st, 28th,
Nov. 4th, 11th, 18th, No class Nov 25th or Dec. 2nd, Final Projects due Dec. 9th)
Meeting Time: 3:00 p.m. – 5:30 p.m.
Texts Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (Penguin Books, 1991).

John Lande, *Lawyering with Planned Early Negotiation* (American Bar Association Publishing, 2011).

Case materials and roles for negotiation simulations will be provided in class by your instructor. There is a course pack fee for these additional materials and this course pack fee will need to be paid for by each student through the Belmont Bookstore. The instructor will distribute these materials in class. *If you do not pay your course pack fee, you will not be able to participate in required negotiation exercises assigned by me as your instructor. Please contact Cory Coyne at law school to provide proof of payment of course pack fee prior to initial class.* Cory.coyne@belmont.edu

Additional, Suggested Texts: (Not required)
Douglas Stone, Bruce Patton, Sheila Heen and Roger Fisher, *Difficult Conversations*, (Penguin Books, 2010)

COURSE DESCRIPTION:

This course will examine the cognitive aspects and the dynamics of negotiation for legal advocates. In addition, the course will explore the process of negotiation in the context of litigation and case management.

COURSE OBJECTIVES AND OVERVIEW:

Resolution of legal disputes involves a necessary collaboration with other people - your client(s), their constituencies, opposing litigants, their constituencies and other legal advocates. Whether your practice is focused on litigation, in-house legal advising or transactional work, successful legal advocates must have a mastery of principled negotiation methods. Failure to pursue skill development in this important field leaves the advocate unprepared for the realities of practice and ineffective in large percentages of their legal offerings.

Since stakeholders in any dispute, transaction or venture do not have identical interests, perceptions, and values, negotiation skills are needed, both professionally and personally, to excel. This course is aimed at enabling you to become a more effective negotiator on behalf of your client as well as yourself. Effectiveness at the bargaining table requires many things, including:

- The ability to create value and execute deals that others might overlook;
- The skill to assess quickly if a situation is negotiable and devise a formidable strategy;
- Recognition of others' negotiating tactics and techniques and effective counter-techniques;
- The strategic skill to garner your, or your client's, fair share of what is negotiated;
- The ability to avoid common mistakes made by negotiators;

- The perception to understand your own ethics, and the ethics of others; and to develop a reputation as being a negotiator with skill and integrity;
- The ability to work with different backgrounds, expectations and values from your own;
- The ability to negotiate and build consensus in groups; and,
- The capacity to reflect and learn from your experience and, thereafter, to modify your own approach in future negotiation opportunities.

Effectiveness requires analytic vision and interpersonal understanding. The ability to identify key stakeholders, their interests, and leverage is essential, yet even the most ingenious strategy will fail if not artfully implemented. By the same token, being very persuasive does no good unless it is in service of a carefully conceived plan. This course provides you with the opportunity to learn how to analyze and prepare for negotiations at a more sophisticated level and how to effectively use negotiations in your practice as a lawyer or legal advisor. It will give you the opportunity to identify your strengths as a negotiator and to work on your weaknesses. It will also further develop your ability to establish a “fallback position,” or alternative to a negotiated agreement, and to use it strategically to strengthen your negotiating position. More fundamentally, the course will provide a conceptual framework to diagnose problems and promote agreement both professionally and personally.

Because the course provides a general approach to negotiation, it draws on examples from history and a variety of industries and contexts. The underlying principles incorporate ideas from a range of fields and disciplines, from economics and decision theory to psychology, organizational behavior and law.

This is also a "skill building" course designed to enable each student to do the following:

1. Learn an organized theoretical framework with which to analyze problems of negotiation
2. Experiment actively with a variety of negotiating and decision-making techniques and styles
3. Become more persuasive, both professionally and personally
4. Refine the tools and techniques learned during the term
5. Become sensitive to ethical issues and issues relating to gender and culture in negotiating
6. Cultivate a personal approach to effective negotiation strategies in legal advocacy

METHOD OF INSTRUCTION:

At the heart of the course are **two important components:** **one**, a set of interactive negotiation exercises and simulations; and **two**, negotiation tips and skill development lectures from expert legal advocates and negotiators.

Interactive Negotiation Exercises:

The interactive negotiation exercises have a dual purpose. First, they will give you hands-on experience with negotiation. You will learn first by actually negotiating, and then by stepping back to compare your approach and results with those of your classmates. You can test your analytic skills and experiment with new techniques. Special preparation and follow-up assignments will encourage you to draw practical lessons from your personal experience.

You will also have the chance to exchange feedback with your classmates in a structured way. The exercises also illustrate the key elements of our systematic approach to negotiation analysis. Our first simulation will involve a two-party, price-focused negotiation. We will then move on to progressively more complex situations involving a broader range of issues, multiple parties, and internal-external relationships. Debriefing the exercises, we will examine the range of agreements that people reached, and then identify the key drivers of success.

We will see why, for example, some pairs of buyers and sellers agree to a low price while others settle much higher, even though both pairs were given the same initial instructions. We will also see why some people reach agreement while others, in identical situations, do not. Comparing

your own results with the class's collective experience will demonstrate the economic, psychological, and social dynamics that animate the negotiation process.

Role-play exercises will be conducted both during class time and between classes, (i.e., by students outside of class). For role-plays conducted in class, additional break out space has been secured in close proximity to the designated course classroom. If students wish to utilize school grounds to conduct role-plays scheduled between classes, they may utilize common areas provided there is no disturbance to other students. Students may also reserve space for their role-plays at the law school by contacting the Administrative Assistant to the Dean's Office at (615) 460-8253.

Skill Development Lectures:

This course will include specific negotiation skill development and tools for mastery from the instructor as well as periodic guest lecturers who will present case studies and negotiation tips and stories from their own practice. Class participants will benefit from an array of negotiation styles and approaches, gleaned from each to craft their own unique negotiation style.

CLASS PREPARATION:

In all interactive negotiation exercises, you will be asked to read the background information for the upcoming negotiation, privately plan your strategy, and then meet with your assigned counterpart to try to negotiate an agreement. Sometimes there will be a pre-negotiation assignment. Preparation for these exercises must be done entirely on your own, not with a peer or study group.

Unless specifically instructed otherwise, **do not** show your confidential instructions to others before, during, or after the negotiations. We will discuss the cases in class **after** the negotiation or in the following class. In the real world, the other parties would not have access to your confidential information unless you gave it to them. Showing this information to any of your classmates would compromise the negotiation experience for all concerned. Likewise, should you reproduce, film, publish or otherwise make the case materials or subject matter of the negotiation role plays available to others or otherwise use these materials in an unauthorized manner, you may be found to have violated the Belmont University College of Law Academic Standards and the Student Code of Academic and Professional Conduct as well as copyright and intellectual property laws. This type of conduct will not be tolerated.

By contrast, when you are actually negotiating with your assigned party, you may discuss as much or as little of your information as you think is appropriate. Whatever you say or do, you should be prepared to explain your negotiation behavior in class. I hope there will be spirited – and useful – discussion about ethical questions of fairness and disclosure that arise during your negotiations.

It should be understood that everyone in the course is trying to achieve as good an outcome as he or she can, consistent with particular instructions. Your skill will improve if you are matched with excellent opponents. Someone who takes it easy on you or who is not prepared does you and your classmates no favor. By the same token, there is no obligation to come to agreement in any of these exercises. If you believe the other side is being unreasonable or unfair, you are free to declare an impasse and walk away from the bargaining table. You should be prepared to explain your decision in class, of course, and you still will have to report the outcome in the post-negotiation discussion.

You will be required to keep track of your own outcomes and to compare them to the group results that will be presented in class. It is extremely unusual for anyone to get an above average outcome in all of the exercises, but some people may do better than others. While it may be a bit discouraging to discover that you are not in the group who appears to excel at negotiation more easily, I hope that you will search hard for explanations as often those students who wrestle with the concepts the most, become the most effective negotiators by the conclusion of the course. It is far better to confront our challenge areas in this learning setting – where the stakes are low and the

opportunities to learn are high – than in real world negotiations, where consequences and losses, financial and otherwise, can be truly painful.

GENERAL COURSE REQUIREMENTS:

Requirement One – Self -Assessment: You will continually review your negotiation performance, your methods, tactics, and strategies – reflection will help you improve.

Requirement Two – Readings: You will read the textbooks and materials per the syllabus.

Requirement Three - Case preparation: You will prepare for in-class exercises by reading the case material and completing a **Negotiation Preparation Worksheet** in advance of the classes. These Preparation Worksheets shall be submitted at the end of the course as part of the Student’s Final Project. If you are unprepared for your role, you may be counted as absent for the class. All case materials are confidential to you and the class. You will return them to me at the end of class so that confidentiality will be preserved. If you would like the instructor to review any of your Preparation Worksheets before you submit as part of your Final Project, do not hesitate to ask.

Requirement Four – Coaching, feedback, “reputation index” and class participation: After each negotiation, you will give your partner(s) oral feedback for improvement, and your partner(s) will return the favor. This kind of honest appraisal will help you immensely particularly if students **pair positive and constructive feedback**. Your classmates will also be giving me feedback on your approach and methods in the negotiation- I call this your “reputation index.” As with the Bar and the business community, your “reputation” in this class will be considered when it comes to calculating your class participation grade. Work diligently to achieve your client’s goals but not to the sole expense of your negotiation partners. Also, you are expected to contribute to class discussions. You will be evaluated upon the quality (not just the quantity) of your contributions and insights. Quality comments might include:

- Identification of strategies/actions that were effective or ineffective and why
- Offer of a unique, relevant perspective based upon analysis and theory
- Contribution that moves the discussion and class analysis forward
- Commentary that builds on others’ comments/insights
- Commentary that links learnings to relevant and/or current events/topics

Requirement Five – Professionalism: An essential contribution you make to the course is that you be professional in your actions in the class and your interactions with your classmates and me. In particular, treat our exercises seriously. If you are at all frivolous about what we do in the class, you will learn less, provide fewer opportunities for others to learn and you will be graded accordingly. This does not mean you must be stern and not enjoy what we do in class. Instead, it means that you should take your roles seriously, and take the exercises seriously. You should try to do well and never demean either the exercises or the people you are negotiating with before, during or after the negotiations are over. You should think about your strategies and work hard to make sure they are appropriate and effective. You should consider the consequences of your actions within the framework of the exercise and what it might be in other situations. (Do not justify your tactics by saying, “it was just a game.”) Likewise, cheating or dishonesty will not be tolerated. This could include: reading another student’s confidential role information before or during the negotiation of that case; consulting with current or former students about the exercise, exam or other class assignments; plagiarism; or any other violations of the Code of Conduct.

OTHER COURSE REQUIREMENTS:

1. Your most important activities outside of class meetings will be writing your **Negotiation Learning Worksheet**, a recording of your thoughts about the classes and readings as well as the negotiations you have every day. This form gives you a chance to reflect on your bargaining, which will help improve your understanding about your negotiations, your actions, and yourself. You will turn in your reports as part of your Final Project. If

you would like the instructor to review any of your Learning Worksheets before you submit as part of your Final Project, do not hesitate to ask.

2. You will also keep **an ongoing language list** of phrases, words, hand gestures and specific things you want to **say and do** in a negotiation (**NOT** a vocabulary list of technical terms used in the course). This list will be turned in as part of your Final Project. If you have questions about whether you are compiling your language list properly, do not hesitate to ask. Submissions for language lists, as part of the Final Project, range from 3 pages to 10 or more. I encourage you to glean as many helpful phrases and gestures as possible from me, the texts, your classmates and beyond for your language list and I will be observing you as you negotiate looking for your use of these terms, words and gestures.
3. All work must be typed and should be complete and error-free in terms of grammar, spelling and punctuation. If your work does not meet this standard, you will be graded accordingly.
4. The **Final Project** in this course will consist of the compilation of a “Negotiator’s Binder.” This Binder is intended to be a tool you can utilize in the future to prepare for negotiations and to refresh your memory as to the learnings, tools and skills of this course. Detailed directions will be provided to you on the compilation of this Binder, however, in short, it will include items such as: all your prep and learning worksheets, your language list, your journal entries, a skill-development matrix with narrative, and a **short five (5) page (minimum) research paper** of an approved topic. You should have 4 research sources, minimum, and please use Bluebook citation method.

The Harvard Negotiation Project and the Dispute Resolution Research Center at the Kellogg School, Northwestern University, shared portions of this syllabus and teaching materials with Belmont University.

Assignment Guidelines and Code of Conduct:

Unless otherwise specified, assignments must be completed independently and without assistance from others inside or outside the class. **It is a violation of Belmont’s and this class’s ethics policy to share information from your interactive negotiation role with anyone else, share your preparation materials outside class, or to seek assistance with these exercise assignments.** Of course, the terms and conditions of the Student Handbook apply. If you use campus computers, you must delete your files and empty the “trash” on those computers. Per § 602 of the Student Handbook entitled, *Student Conduct*: Students at the College of Law are subject to the rules and procedures set forth in the Student Code of Academic and Professional Conduct (“Code of Conduct”). Furthermore, students at the College of Law must adhere to all Belmont University policy statements, which are outlined in the Bruin Guide. A copy of the Bruin Guide may be found on Belmont University’s website. The Belmont University College of Law Academic Standards and the Student Code of Academic and Professional Conduct make it an Honor Code Violation to: give or receive aid during examinations; to engage in unauthorized collaboration; to give or receive false or impermissible aid in course work, in the preparation of report, or in any other type of work that is to be used by the instructor as the basis of (your) grade; and, generally, to engage in any form of academic fraud. Furthermore, (you) will uphold (your) responsibility to see to it that others abide by the spirit and letter of this Code of Conduct. Your participation in this course affirms your acceptance of this Code of Conduct.

You are agreeing to follow that code and general guidelines for the negotiation simulations:

- Empathize with the role. Try to see the world as your assigned character sees it and behave accordingly, short of physical violence, of course.
- Do reasonable ad-libbing, but do not add any facts that are not in the case.
- Stay in role. Do not jump out of role to comment on the process. If the other person does this, ignore the interruption, treating the out-of-role behavior as a fleeting psychotic episode.

- You are not required to settle.

Attendance: In contrast with the standard attendance requirements in the Student Handbook, please note that attendance in this course is mandatory. Because this class depends upon having the correct number of persons available to negotiate, and the class experience is paramount, you should take this class ONLY if you plan to attend ALL of the class sessions. Except due to observation of student's religion with notice to instructor, failure to attend ANY CLASS or ANY PORTION OF ANY CLASS will impact your class participation and overall grade for the course and could result in a failing grade. Excellent role-play exercises are only possible when we learn together. I expect each of you to partner with me and each other so that mastery is not only possible, it is achieved. It is probable that all of you will do very well in this class. If you or I perceive you are having difficulty or if you want to be learning more, we will discuss the learning environment and we will work toward improving the class to serve your needs. Please note that if you attend class yet are unprepared for any exercise or portion of the class, you may be marked as absent for the class.

Grading: Grading on all worksheets, daily assignments, class participation, and your final examination/project will be graded on the standard A – F grade scale set forth below. The grading and GPA calculations set forth in the College of Law Student Handbook apply. Please do not email the instructor any assignments unless instructed to do so. **Your class participation grade will be negatively impacted by numerous factors such as: tardiness, failure to adequately prepare for class and role-plays, absences/failure to attend full class session, unprofessional/disrespectful conduct, disruptive behavior/talking to classmates in class, etc.** All work must be typed and should be error-free in terms of grammar, spelling, and punctuation. Work with errors will be graded accordingly.

Final grades are figured as follows: **Class participation and negotiation performance- 50%**
Quizzes and Final project – 50%

GRADING SCALE: The scale that will be used for assigning overall course grades is as follows:

Letter Grade	Numerical Value
A =	4.0
A- =	3.70
B+ =	3.30
B =	3.00
B- =	2.70
C+ =	2.30
C =	2.00
C- =	1.70
D =	1.00
D- =	0.70
F =	0.00

- Please mute cellular phones, beepers and all other unauthorized electronic devices prior to entering the classroom and return calls only at break times. **Please do not check email or text, or otherwise engage in unauthorized use of phones, handhelds, computers or other electronic devices during class time.**

Accommodation of Disabilities:

In compliance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, Belmont University will provide reasonable accommodation of all medically documented and verifiable disabilities. If you have a disability and would like the university to provide reasonable accommodations of the disability during this course, please notify the Belmont University's Disability Services Office at (615) 460-8531 or (615) 460-6407, and the Dean of Students Office as soon as possible. Only notify the Dean or Dean of Students regarding this accommodation, not the course instructor.

Class Schedule:

	In Class	Complete to Hand in at Class	Read for Class
<p>Class 1 9/ 9/13 PLEASE NOTE CHANGE IN INITIAL CLASS DATE</p>	<p>Lecture: Introductions; Instructions for class and assignments; overview of course; discussion of integrative vs. positional bargaining; durable deal making; and, negotiation goals. Case #1 Negotiation in class, followed by class discussion and observations.</p>		<p>GTY Textbook, p.1-80; <i>Getting to Yes (GTY) You Tube</i> Videos: http://www.youtube.com/watch?v=-m0UDJ7a2KA (intro) http://www.youtube.com/watch?v=HSF4RP3on60 (interests) http://www.youtube.com/watch?v=-Lwpm4L84dk (options) http://www.youtube.com/watch?v=hOtwE3PBUIk (standards and the rest)</p>
<p>Class 2 9/16/13</p>	<p>Lecture: Anchoring introduction to principled negotiation theory (vs. positional bargaining); position vs. aspiration point. Case #2 Negotiation in class, followed by class discussion and observations.</p>	<p>Turn in completed Syllabus Quiz</p>	<p>GTY Textbook, p.81-128; GTY cont'd videos; review Example Case Preparation Sheet on TWEN</p>
<p>Class 3 9/23/13</p>	<p>Lecture: Continued discussion of distributive negotiation as well as integrative and compatible goals; defining Pareto Optimality; options generation techniques; brainstorming dynamics. Case #3 Negotiation in class, followed by class discussion and observations.</p>		<p>GTY Textbook, p.129-148;</p>
<p>Class 4 9/30/13</p>	<p>Lecture: Continued discussion of distributive negotiation as well as integrative and compatible goals; standards/legitimacy in negotiations; people and relationship issues; personal negotiation style assessment. Case #4</p>	<p>Complete Conflict Self-Assessment Tool on TWEN; Print results and bring to class.</p>	<p>Conflict Style Assessment on TWEN; Read Active Listening article.</p>

	Negotiation in class, followed by class discussion and observations.		
Class 5 10/7/13	Lecture: Discussion of Salary Negotiation Materials; Compatible Interests; BATNA Case #5 – Negotiation in class, followed by class discussion and observations.		Complete Reading of <i>Getting to Yes</i> (Ten Questions People Ask Section); <i>Getting to Yes</i> Quiz; review salary negotiation materials on TWEN
Class 6 10/14/13	Case #6 Lecture: Case discussion; discussion of emotion and people issues in negotiation and the neuroscience of conflict; countering power myths, imbalances and hardball tactics; emotions in negotiations; gender dynamics; reframing.	Turn in completed <i>Getting to Yes</i> Quiz	Finish watching <i>Getting to Yes</i> videos
Class 7 10/21/13	Case– 7 Lecture: Discussion of Case #7 and observations; role of culture in negotiations and how to prepare.	Turn in negotiation tips per instructor’s directions from www.ExecutivePlanet.com (unless instructor requests in class that you to submit as part of Final Project)	Lande Textbook, p.1-72; Review Cultural Diversity websites: http://www.state.gov/r/pa/ei/bgn/ and www.Executiveplanet.com Assignment for www.ExecutivePlanet.com
Class 8 10/28/13	Case 8 Lecture: Special role play instructions; discussion of the role of persuasion in negotiations; discussion of case 8.		Lande Textbook, p.72- 164; view Power of Persuasion Video (Instructor will provide details.)
Class 9 11/4/13	Case 9- Outside of Class Discussion of multi-party negotiation issues; managing coalitions; consensus building, and ethics in negotiations.		Lande Textbook, pg. 165- 256
Class 10 11/11/13	Case 10 Lecture: Discussion of Case 9, multi-party negotiation issues; managing coalitions; consensus building, and ethics in negotiations; continued discussion of planned early negotiation strategies;	Turn in Lande Quiz	Finish reading Lande Textbook, and peruse accompanying Appendixes (forms/info. on disc). Complete Lande Quiz (posted on

	promoting early negotiation in litigation and discovery disputes; incorporating negotiation and dispute resolution strategies in your legal practice; ethics in agency.		TWEN).
Class 11 11/18/13	Case #11- OUTSIDE CLASS Guest Panel Lecture: Professional Negotiator Panel Discussion		Review Panel Bios, Prepare questions for panel members.
11/25/13	NO CLASS- Thanksgiving Break		
12/2/12	NO CLASS- Exam Period		
12/9/13 FINAL PROJECT DUE	FINAL PROJECT DUE: Turn in to Cory Coyne by beginning of class period. (Individual negotiator style feedback also available from Instructor at conclusion of examination.).		

Helpful Negotiation Resources for Advocates:

- Madelyn Burley-Allen, *Listening: The Forgotten Skill* (John Wiley and Sons 1995).
- R. Blake, and Mouton, J.S. *Solving Costly Organizational Conflicts: Achieving Intergroup Trust, Cooperation, and Teamwork*. San Francisco: Jossey-Bass, 1984.
- Dale Carnegie, *How to Win Friends and Influence People* (Simon & Schuster 2009).
- Kenneth Cloke, *Resolving Personal and Organizational Conflict* (Jossey-Bass 2000).
- William Eddy, *High Conflict People in Legal Disputes* (Janis Pub. 2006).
- D. Ewing, *Justice on the Job*. (Boston: Harvard Business School Press, 1989).
- Roger Fisher and Daniel Shapiro, *Beyond Reason: Using Emotions as You Negotiate* (Viking Adult 2005).
- Deborah M. Kolb and Judith Williams, *The Shadow Negotiation: How Women can Master the Hidden Agendas that Determine Bargaining Success* (Simon and Schuster 2000).
- J. Kottler, *Beyond Blame: A New Way of Resolving Conflicts in Relationships* (1994).
- Anderson J. Little, *Making Money Talk*, (American Bar Association Publishing, 2007)
- D. Malhotra and M. Bazerman, *Negotiation Genius* (Bantam 2008).
- Terri Morrison, *Kiss, Bow or Shake Hands*, (Adams Media 2006).
- Andrea Schneider and Christopher Honeyman, *The Negotiator's Fieldbook* (ABA 2006).
- R. M. Schwartz, *The Skilled Facilitator: Practiced Wisdom for Developing Effective Groups*. San Francisco (Jossey-Bass 1994)
- G. Richard Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (Penguin Books 2000).
- K. A. Slaikeu, *Chorda Collaboration Skills*. (Austin, Tex.: Chorda Conflict Management, Inc., 1994).
- Leigh Thompson, *The Mind and Heart of the Negotiator, 4th Edition* (Prentiss Hall 2007).
- William Ury, *Getting Past No: Negotiating your Way from Confrontation to Cooperation* (Bantam Book 1993).
- Ziegenfuss, J.T. *Organizational Troubleshooters: Resolving Problems with Customers and Employees*. San Francisco (Jossey-Bass 1988).