

*Pepperdine University School of Law* (9.11.14)  
**Negotiation Theory & Practice**  
**Fall 2014 Syllabus**

Professor Maureen Weston  
Law 1492.01 Classroom F  
Tuesdays 1:40-3:40 pm

I. **COURSE OBJECTIVES:**

Negotiation Theory and Practice is designed to acquaint students with the theory and practice of negotiation as a process used in both transaction planning and dispute resolution. This particular version of the class utilizes, in part, materials from Straus Institute training programs that are offered to thousands of lawyers, judges, and other professionals each year. It requires students to read and discuss a variety of written materials, complete written assignments, and engage in a variety of negotiation exercises.

Negotiation is an essential part of life for most people, and it is particularly important for practicing lawyers. Indeed, much of a lawyer's interpersonal time is spent negotiating not only with the "other side," but also one's clients, colleagues, even secretaries and court clerks. Because lawyers spend so much time negotiating, people expect lawyers to be skilled negotiators simply because they are lawyers. However, most lawyers spend little time, if any, actually thinking about negotiation. Negotiation is not just a matter of practice or instinct, it is both an art and a science. To learn how to improve our negotiation skills, we need to do several things: (1) learn our strengths and weaknesses as negotiators, (2) understand negotiation theory from the vantage point of various disciplines (law, psychology, and economics to name a few), and (3) put negotiation theory into practice.

Remember that everything we do in this class is focused around my primary goal - helping you approach future negotiations in a more knowledgeable manner so you become better lawyer-negotiators. As a result, emphasis will be placed on developing awareness of how one can improve as a negotiator and on helping others improve as negotiators. Hopefully this class will help provide you with a framework for continuing to improve your negotiation skills long after the class has ended.

Among the **course objectives** are to improve your ability to negotiate effectively. Ideally, students will accomplish the following:

- (1) develop an organized intellectual framework to identify, plan, prepare for and analyze negotiation problems and settlement situations, and
- (2) understand the nature of negotiations, including the influence of various behaviors, emotions, perception, cognition, communication, leverage, culture and ethics;
- (3) develop skills and confidence as a negotiator, including an awareness of one's own "hot buttons" and "bargaining style; and

(4) gain experience in the negotiation process in a variety of contexts by experimenting actively with a variety of suitable negotiating techniques and to develop yourself as a negotiator.

## II. REQUIRED MATERIALS:

Leigh L. Thompson, THE MIND AND HEART OF THE NEGOTIATOR (5th ed. 2011)

*Note: earlier editions of the assigned book are also acceptable.*

Supplemental Materials as announced and distributed throughout the semester.

### *Recommended Readings on Conflict Resolution & Negotiation*

Fisher, Ury & Patton, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN

Korobkin, NEGOTIATION THEORY & STRATEGY (Aspen/Wolters Kluwer 3<sup>rd</sup> Ed. 2014)

Charles Craven, NEGOTIATION: SKILLS & VALUES (Lexis Pub. 2010)

Mnookin, et. al., BEYOND WINNING: HOW LAWYERS HELP CLIENTS CREATE VALUE IN NEGOTIATIONS (Harvard 2000).

## III. COURSE FORMAT

Our class sessions will examine key aspects of the negotiation process in depth, discuss the readings, and consider critical issues that can or will be raised with regard to your experience. The course involves a series of assignments, exercises, simulations, and role-players, followed by reflection, analysis, and discussion, both written and oral. It is a hands-on, **interactive, personal and experiential** form of learning, not a lecture course. Every class session will involve at least one negotiation exercise related to the particular process of negotiation under study. The substantive focus of problems will be varied. Generally, the exercises will not require work on the substantive issues. In some cases, written assignments will be required as part of the exercise.

## IV. CLASS SESSIONS

**1. PREPARATION:** Assigned reading materials provide the intellectual framework and “set the stage” for upcoming assignments, activities and discussions. In keeping with an experiential approach to learning, concepts to be illustrated through exercises will not always have been delineated beforehand. More commonly, they will be identified and elucidated during debrief. **Students will need a good handle on the content of the readings to involve themselves effectively in activities and discussions and to execute written assignments capably.** In order for the negotiation exercises to be as realistic as possible, all students will spend some time playing the role of parties in exercises. Preparation is expected by those negotiating and those playing the roles. Preparation is also expected as it relates to readings, discussions, and planning for specific exercises.

**2. ATTENDANCE:** This course requires the full participation of all students. **Timely attendance for the entire class meeting is necessary and is a factor in grading.** If, for unavoidable reasons, attendance is not possible, please contact Professor Weston in advance. You may contact me by phone or email at the contact information listed below. The fact that a student was absent will not excuse the student from assignments.

3. **PARTICIPATION:** in class exercises and dialogue is of the essence. Please use Name Placards. Students are expected to make “mistakes” and “sub-optimal” agreements when executing the simulation/exercises – that’s okay. The class is encouraged to explore these mishaps in discussion. The more open students are about what happens, and the internal process as the action unfolds, the more they will enrich the class and learn.

There is no one right way to negotiate in every situation. Rather, there are different approaches and styles that are sometimes more effective and less effective. For example, while this course’s general approach is focused toward interest-based bargaining /problem solving negotiation, there are times when a more competitive or “hard bargaining” approach may be necessary. As you learn to expand your negotiation repertoire, be assured that you will not be penalized for experimenting with different techniques, regardless of the outcome of your negotiation. Since this class provides a relatively risk-free learning environment, feel free to experiment in your negotiations – and be mindful of the fact that learning new skills takes time, practice and patience.

Students will not be graded on their ‘success’ in negotiation – so there is no need to be silent about problems, mistakes, fears and uncertainties. Students will be evaluated on the energy they bring to these activities and on the quality of their contributions and insights. Quality comments offer a relevant but unique perspective, move the discussion/analysis forward, build on other comments, and demonstrate reflective thinking.

Discussion Leader Teams: Students in groups of four may be assigned a “Team” number to lead a particular week’s discussion of the readings, issues and topics, as set for the in the course schedule. Obviously, the entire class is expected to contribute. Leaders are given authority to call on class members as well as assign pop quizzes! **Each student is expected to come to class prepared to discuss “5 Key Points/Ideas/. . .” from the assigned readings.**

Surfing the web, emailing, texting, etc. during class is prohibited. It is a sign of courtesy to lower laptop screens when not actively taking notes. Learning to be a better negotiator is not something that can be done “to” or “for” you. You must work on it yourself, and what you learn in this course in large part depends upon your effort.

## V. WORKING FILES

Self-reflection is a key means of deepening your understanding of yourself as a negotiator, and journal entries/working file assignments are designed to provide you with an opportunity to engage in this kind of reflective learning. Each student must maintain a **Working File**, which will consist of a number of written assignments. Some assignments will relate to particular negotiation exercises completed during class. Other assignments will relate to negotiation issues found in readings or class discussions. In general, the working file will consist of 1 to 2 pages (single-spaced) reflecting upon the day’s class session. As noted in the syllabus, a total of five working files are assigned. Other group projects, as noted.

A basic format would be: (1) to describe the topic/issue/or skill described in the lecture and reading assignment; (2) to discuss the public policy or stylistic debate involving the subject presented in that class; and (3) to describe your views or intended approaches towards the subject presented in that class. The purpose of the Working File is to insure some structured analysis of negotiation theory and practice. It will be evaluated on its analysis and the personal reflection of the author. The Working File entries will be assigned after most class sessions and due at the

beginning of class the following week. Please maintain a copy of your Working File for your own records. The Working Files will be scored on a scale of 1 (grim) to 10 (outstanding).

## VI. FINAL PAPER

In lieu of a final examination, each student must complete a “mini research paper” analyzing a negotiation topic of your choice (with professor approval). Your paper should be 14-16 pages (double-spaced) in length, including footnotes. Papers will be graded on the quality of analysis, incorporation of concepts and themes of the class, organization and writing.

The paper must be completed on a subject that will allow the student to apply the principles of negotiation learned during the course. I strongly urge you to come up with an interesting and challenging topic that is of special interest or concern to you that you will enjoy researching and analyzing. Perhaps a topic related to a field of law you are interested in practicing, or just an area in politics, sports, society, culture that you would like to explore more fully. Use this as an opportunity to become an expert in a particular area of your choosing.

I am happy to work with you and to provide suggestions regarding potential paper topics. Briefly, examples of topic choices are, *inter alia*:

(1) **A negotiation** as reported in the media or depicted in literature/film. Current examples can be drawn from the worlds of law; global, national or local politics (immigration, health care, environment); sports (e.g., Donald Sterling!, sports negotiation such as NFL or NBA lockouts, NCAA, youth); entertainment (talent contracts, Aero, Guild negotiations, daresay Justin Bieber); religious; business; medical; consumer; employment; interest or advocacy groups; education; intimate relationships; legislative (state or federal). Other possibilities may include a study of an historical negotiation or comparative approach.

(2) **A negotiator.** Lead negotiators in politics and diplomacy; talent and sports agents, or historic figures, e.g, Henry Kissinger, Gandhi, Martin Luther King, Kenneth Feinberg, Hillary Clinton.

(3) **A stream of research** in one of the many areas of negotiation. Examples: the effectiveness of threats, psychology of negotiation, face saving, strategies of deterrence, usefulness of third parties, breaking impasse, cross-cultural considerations, gender differences, perceptual distortion, cognitive biases, sources of power, ethics of deceptive practices, etc.

The topic should be one of special interest or concern to the student, one he or she will enjoy researching and analyzing. The subject should allow the student to apply and demonstrate the principles of negotiation learned during the semester.

Papers will be evaluated according to a number of factors including the writer’s expressed knowledge of negotiation principles and techniques, application of those principles and techniques to the chosen subject, soundness of analysis, quality of research, facility of expression, and originality. Any generally accepted graduate paper format may be used; either footnotes or endnotes may be used.

**Topic Proposal:** A description of the topic (two or three paragraphs) must be submitted in writing no later than **Oct. 14**.

**Final Paper Due: Friday, December 5** (by 5pm). Per Straus policy, papers are to be submitted via [turnitin.com](http://turnitin.com). *Please Note*, turnitin.com is software program that can detect plagiarism or use of a paper submitted in another class. Please be mindful to cite your sources appropriately and to not write your paper on a topic that you've written on for a prior class.

Note Academic Policy 4.5.C. Prohibition on Submitting Papers for Credit Multiple Times: Students may not submit their own work product for credit in more than one course at Pepperdine School of Law or elsewhere. Credit will not be awarded for a student's own work product that has already been submitted to obtain academic credit in another course, either at Pepperdine School of Law or elsewhere.

If a student wants/needs to include a portion of work from a prior paper, we require the following (this is not articulated in the academic policy but has been our practice):

1. They notify the professor and get their permission to include a portion of their own work that was used in another paper.
2. That they clearly cite themselves and the earlier class paper in the new paper so the professor can easily see which portion was previously submitted.
3. That any material used from a previous paper be in addition to the requirement for the current class/assignment. Thus, if you are requiring your students to write a 20 page paper and a student wants to use 4 pages of work from a previous paper, the new paper would need to be 24 pages in length.
4. Pepperdine's strict policy against "recycle plagiarism." Honor Code § 3.01 (9) states "**to submit for credit work that has been previously offered for credit or submitted to a journal" is expressly forbidden.** Thus, credit will not be awarded for a student's own work product that has already been submitted to obtain academic credit in another course, either at Pepperdine School of Law or elsewhere.
- 5.
6. Permission from a professor **will not** allow a student to use any of the text of a paper previously written by that student as part of a paper for credit in **any** class. The rule is that an overlap of a student's own papers, such as overlapping topic choice or sources, is unacceptable without prior express Professor permission, but reuse of previously written text is a violation of the Honor Code.
- 7.
8. Please email [lawhonorboard@pepperdine.edu](mailto:lawhonorboard@pepperdine.edu) if you have any questions, comments or concerns. You can read the full Honor Code here: <http://law.pepperdine.edu/academics/student-handbook/law/honorcode.htm>

## VII. GRADING

The Negotiation and Settlement Advocacy course is a graded course. The grade will be based on the Working Files (15%), the Final Paper (70%), and Class Participation (15%). A portion of the class participation grade may be drawn from the actual negotiation exercises, in-class quizzes, and completion of various negotiation planning instruments or post-negotiation assignments.

## VIII. CONTACT INFORMATION:

Please feel free to drop by my office on the third floor (Room 303), call, or e-mail me if you have any questions or would like to discuss other school-related matters. My office hours are Tuesday/Thursdays 1:30 to 3:00 pm, or by appointment. My campus phone number is 310-506-6313; cell: 310-985-3367. Email: mweston@pepperdine.edu.

Guest Speaker

Brian Carnes/David Olan  
Anthony Natkis – Dodger Sale & Real Estate Negotiations

**Class Schedule & Syllabus**

Week	Negotiation Topic	Reading
<p><b>#1</b> Aug. 26</p>	<p><b>I. <u>Overview of Negotiation</u></b>                      “The Mind and Heart of the Negotiator &amp; Lawyer”  <i>Journal 1: Letter to Self</i></p> <ul style="list-style-type: none"> <li>- How do you define negotiation?</li> <li>- How does this compare to the reading definition?</li> <li>- Who are you as a Negotiator?</li> <li>- What are your goals for this class?</li> <li>- How will you assess your own progress?</li> </ul> <p>- Practice: Silent Negotiation ; Buy/Sell Home                      K1 Simulation: THE PRADO SCOOT</p>	<p><b>Mind &amp; Heart (MH):</b> <b>Chapter 1</b></p>
<p><b>#2</b> Sept 2</p>	<p><b>II. <u>Negotiation Preparation</u></b></p> <p>A. The Fixed Pie Perception                      B. Every Negotiation is a Mixed-Motive Process                          - Managing Mixed Motives - <i>Prisoner’s Dilemma</i>                      C. Self-Assessment                      D. Sizing Up the Other Party                      E. Situation Assessment                      F. Key Terms: Reservation Point, BATNA, Target                      K2 Ex: CASA GRANDE** or ON THE STUMP*</p>	<p><b>MH: Chapter 2</b></p> <p><b>Estimating Bargaining Zone</b></p> <p><b>Due:</b> Journal #1 Letter to Self</p>
<p><b>#3</b> Sept. 9</p>	<p><b>III. <u>Distributive Bargaining: Slicing the Pie</u></b></p> <p>A. Value-Claiming Skills:                      B. Using the Predictability of DB                      C. Linkage                      D. Anchoring</p> <p>Exercise: “<i>Win as Much as You Can</i>”                      Ex: Vic’s or WAS; Sally Soprano                      K3 Ex: Club West or The Baseball Player *</p>	<p><b>MH: Chapter 3</b></p> <p>Leaders: Team 1</p>
<p><b>#4</b> Sept. 16</p>	<p><b>IV. <u>Integrative/Collaborative Bargaining</u></b></p> <p>A. Creating Value                          <i>Appleby House</i> Case Study                          Purdy Negotiation                      B. Four-Step Problem-Solving Approach                      K4 Ex: BLOCKBUSTER or CARPOOL</p>	<p><b>MH: Chapter 4 &amp; Appendix I</b>                      Leaders: Team 2</p> <p>Due Next class: Working File #2</p>
<p><b>#5</b> Sept. 23</p>	<p><b>V. <u>Developing a Negotiation Style &amp; EK</u></b></p> <ul style="list-style-type: none"> <li>- Assessing and Testing Your Approach</li> <li>- Emotional Knowledge</li> </ul> <p>Exercise: K9 Smith v. Elect or SELS</p>	<p><b>Chapter 5</b></p> <p>Leaders: Team 3</p> <p><b>Negotiator Style</b></p> <p><b>Due:</b> Journal #2 (Compare Distributive and Integrative Bargaining)</p>

Week	Negotiation Topic	Reading
#6 Sept. 30	<p><b>VI. Establishing Trust, Reputation, Relationships</b></p> <p><b>Due:</b> Working File #3 (Negotiation Styles &amp; Tactics)</p> <p>K6 Simulations: IN RE INT'L ROOFING CO. or FARLEY V. COMPRESI</p> <p>K7 Exercise: THE CONSTRUCTION VENTURE</p>	<p><b>Chapter 6</b></p> <p>Leaders: Team 5</p> <p>Fair Division &amp; Social Norms</p> <p>Trust</p>
#7 Oct. 7	<p><b>VII. Power, Persuasion and Ethics</b></p> <p>Sources of Power</p> <p>Persuasion Tactics</p> <p>Negotiation Ethics</p> <p>- <i>Truthfulness or Truthiness in Negotiation?</i></p> <p>K5 Power: Simulation: THE WHITE ALBUM</p> <p>K14: Simulation: MOSSYBACK LANE**</p>	<p><b>Chapter 7</b></p> <p>Leaders: Team 6</p> <p>ABA Ethics Op 06-439 (handout)</p> <p>Power/Deceit</p> <p>Due Next Class #3</p>
#8 Oct. 14	<p><b>V. Advanced Integrative Bargaining</b></p> <p>- Threats to Effective Problem Solving</p> <p>- Creative Negotiation Strategies</p> <p>Ex: <i>The Blockbuster</i>: Movie star K Negotiation</p>	<p><b>Chapter 8</b></p> <p>Leaders: Team 4</p> <p><b>Due:</b> Working File #3 (Ch 6-7)</p>
#9 Oct. 21	<p><b>VIII. Difficult Conversations, Tacit Negotiations &amp; Social Dilemmas</b></p> <p>- Video Case Study &amp; Analysis of Negotiation Styles, Tactics and Outcomes</p> <p>-- critique negotiation</p> <p>- Time to meet with groups to plan cross-culture negotiation presentations</p> <p>K8 EX: ORCA VIEW*</p>	<p><b>Chapter 11</b></p> <p><i>Getting Past No</i>, (summary at <a href="http://www.crinform.org/booksummary/10438/">http://www.crinform.org/booksummary/10438/</a>)</p> <p><i>Getting to Yes</i> (summary at <a href="http://www.colorado.edu/conflict/peace/treatment/pricneg.htm">http://www.colorado.edu/conflict/peace/treatment/pricneg.htm</a>)</p> <p>Emotions &amp; Conflict</p> <p><b>Due:</b> Paper Topic Proposal</p>
#10 Oct 28	<p><b>IX. Cross-Cultural Negotiations</b></p> <p>- Working Group Discussions*</p> <p>- Handout final negotiation exercise project</p> <p>- schedule final negotiations over next 2 weeks</p> <p>Simulation:</p>	<p><b>Chapter 10</b></p> <p>Teams 7 &amp; 8</p> <p>Group Membership</p>
#11 Nov. 4	<p><b>X. Multiparty Negotiations</b></p> <p>Negotiation Planning</p> <p>Applying Negotiation Strategies</p> <p>Feedback and Self-Assessment</p> <p>Discuss Final Negotiation Exercises</p>	<p><b>Chapter 9</b></p> <p>Principal-Agent</p> <p>Multilateral Negotiations</p>

<b>#12</b> Nov. 11 (no formal class)	<b>X. <u>Final Neg. Exercise</u></b> - Live Team Negotiation Observations Simulation: The Stadium/Harbocoro or NW Timber/Dayton	Scheduled Negotiations Observed by Professor  Journal #4 – Preparation Strategy Plan
<b>#13</b> Nov. 18 (no formal class)	<b>XII. <u>Final Negotiation Exercise</u></b> - Live Team Negotiations	Scheduled Negotiations Observed by Professor
<b>#14</b> Nov. 25	Thanksgiving Holiday	
<b>#15</b> Dec. 2	<b>XII. <u>Last Class: Student Reports on Research</u></b> - brief reports about research projects	Due: Journal #5 - “Top Lessons”; Letter to Self; Evaluations

**Final Papers and Working Files are Due Friday, December 5, 2014, by 5 pm.**