

**University of Cincinnati College of Law**  
**SYLLABUS**

**Negotiation**  
**Fall Semester, 2019**  
**Mondays, 3:05 – 6:05 P.M.**

**Marjorie Corman Aaron, Professor of Practice**  
**Director, Center for Practice**

First, welcome to the Negotiation course! I look forward to working and learning with you.

**About “Learning outcomes”**

It is fair to ask what the course is designed to achieve – what you can expect to learn. As its “designer and professor, I can state that the course is designed to enable all students to become effective negotiators for legal practice settings. To accomplish this goal you will learn:

- The necessary elements of effective negotiation in a variety of practice contexts, including single issue distributive negotiations, largely integrative negotiations, increasingly complex and mixed-purpose negotiations, multi-party negotiations, within team and across team negotiations, high conflict settings, negotiations with your clients and across dispute settlement and transactional tables. Students will learn which prescribed negotiation strategies are more likely to be effective in different contexts.
- Critical findings in the psychology of decision-making, and research in communication and emotion impact negotiation, and how these should inform negotiation practice.
- Negotiations are spoken, written, and interactive. We will focus on a negotiation’s deliberate structure, language choices and medium of communication;
- How to handle common roadblocks, challenges, or “dirty tricks”, as well as strategic interventions or “turning moves” to shift the course of a negotiation.
- What are common differences in individual tendencies, strengths and weaknesses, based on underlying differences in personality and approaches to conflict?
- The role of creativity in problem solving, including conditions that will prevent or foster creativity among negotiators.
- An accurate sense of your own strengths, weaknesses, and tendencies in negotiation, and the ability to reflect critically upon your own and others performance, including the relative value of the results. In short, students should learn to become “reflective practitioners” of negotiation.
- The ethics of negotiation practice within legal practice.
- How to apply the course concepts and prescriptive advice, in real time.
- Become more confident, comfortable, and skilled as a negotiator.

And now, on to all of the syllabus instructions.

**All students must register with TWEN.**

**Introduction to Required and Alternative Course Readings:**

You will be required to complete readings from three sources: (1) D. Mahlotra and M. Bazerman, *Negotiation Genius* (Bantam Books 2007) – officially our course text, chosen because it is accessible, affordable and, in my view, a solid and insightful synthesis; (2) a selection of articles relating to each week’s in-class exercises, posted on TWEN; and 3) negotiation simulations/exercises.

Note that if you prefer different choices as to articles read each week, you may select related chapters in *Negotiation Essentials for Lawyers*, edited by Andrea Kupfer Schneider and Christopher Honeyman (ABA Section of Dispute Resolution 2019), or their earlier collection [The Negotiator’s Fieldbook](#) (ABA Section of Dispute Resolution: 2006) or from [The Handbook of Dispute Resolution](#), edited by Michael L. Moffitt and Robert C. Bordone (a publication of the Program on Negotiation at Harvard Law School, Jossey-Bass, 2005). I will make a copy of each of these books available on closed reserve for this course.

On TWEN, All articles have been indexed with a two number system to facilitate your finding them. (Example: The three readings from week one are labeled 1.1, 1.2, and 1.3 in syllabus. The articles located in the Resources section of the TWEN course site will carry the same label).

(1) **Exercises and Role Simulations:** Role information for class negotiations will usually be handed out in class. These are *absolutely essential* readings for participation in the class.

Before the end of the semester, students will be required to pay the sum of approximately \$26-32, precise amount TBA, by cash or check to the College of Law - the direct cost charged for these copyrighted materials. The fourth floor faculty assistant will calculate the final cost and collect these when you turn in final written submissions. Note that I am trying to keep this down this year by substituting in simulation cases we can use without charge, but there are still some that seem to me to be worth the cost. *Please note that materials written by me and a number of my colleagues are without charge.*

(2) **Course Text:** D. Mahlotra and M. Bazerman, *Negotiation Genius: How to Overcome Obstacles and Achieve Brilliant Results at the Bargaining Table and Beyond* (Bantam Books 2008).

(3) **TWEN site articles:** This syllabus references articles that are available on the Course’s TWEN site. These articles should also be available in a notebook titled ‘Aaron Negotiation Course Reader’ on reserve in the law school’s library.

***Additional, Excellent Books for Your Optional Reference (in rough chronological order):***

Howard Raiffa. The Art and Science of Negotiation. Cambridge, Mass: The Belknap Press of Harvard University Press, 1982. *Instructor's note*: The math-challenged could read half of each chapter, skip the equations, and benefit greatly. This is the original work that set the stage for just about all that has followed. None are better, in your professor's view.

Roger Fisher, William Ury, and Bruce Patton. *Getting to Yes: Negotiating Agreements Without Giving In*, 2<sup>nd</sup> edition. New York: Penguin, 1991.

William Ury. *Getting Past No: Negotiating Your Way From Confrontation to Cooperation*. New York: Bantam Books, 1991, 1993.

*Harvard Business Essentials: Negotiation*. Harvard Business School Publishing Corporation, 2003.

Robert Mnookin, Scott Peppett, and Drew Tulumello, *Beyond Winning: Negotiating to Create Value in Deals and Disputes*. Belknap Press of Harvard University Press, 2004.

G. Richard Shell. *Bargaining for Advantage: Negotiation Strategies for Reasonable People*, 2d. ed., Penguin 2006.

Howard Raiffa, John Richardson, and David Metcalfe. *Negotiation Analysis: The Science and Art of Collaborative Decision Making*. Belknap Press of Harvard University Press 2007.

David Lax and James Sebenius, *3D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals*. Harvard Business Press, 2006.

Gerald R. Williams and Charles B. Craver. Legal Negotiating. Thomson West, 2007.

Melissa L. Nelken. *Negotiation: Theory and Practice*, 2<sup>nd</sup> Edition. LexisNexis, 2007.

Korobkin. *Negotiation: Theory and Strategy*. Aspen Publishers, 2010.

Roy Lewicki, Bruce Barry, and David Saunders. *Essentials of Negotiation*. McGraw-Hill/Irwin 2010.

Michael Wheeler. *The Art of Negotiation: How to Improvise Agreement in a Chaotic World*. Simon & Schuster 2013.

Chris Voss with Tah Raz. *Never Split the Difference: Negotiating as if Your Life Depended on It*. HarperCollins 2016.

Daniel Shapiro, *Negotiating the Non Negotiable: How to Resolve Your Most Emotionally Charged Conflicts*. Viking Press, 2016.

**THIS SYLLABUS AND THUS THE COURSE PLAN, IS LIKELY TO CHANGE BASED UPON STUDENT PREFERENCES, CHALLENGES, AND PROGRESS. Also, more detailed information regarding required submissions and the basis of final grades is contained in the Negotiation Course Memorandum on the TWEN site.**

### **Preparation for Class 1 (August 19, 2019)**

**Read:** *Negotiation Genius* Text: Chapter 6, pp. 139-148.

On TWEN:

**1.1** A. Schneider. “Perceptions, Reputation, and Reality: An empirical study of negotiation skills.” Dispute Resolution Magazine vol. 6 no. 4 (Summer 2000): pp.24-28.

**1.2** J. Dolan. “How to Prepare for any Negotiation.” Dispute Resolution Journal vol. 61 Issue 2 (2006) 64-66.

*Selections from Conflict, Cooperation & Justice*. Bunker, Rubin & Associates, eds. Jossey Bass: John Wiley and Sons, 1995.

**1.3** Roy Lewicki and Barbara Bunker. “Trust in Relationships: A Model of Development and Decline.” pp.133-69.

**1.4** M. Deutsch. (Commentary) “Cooperation: The Fragile State.” pp.253-57.

### **Class 1 –August 19, 2019: Jump in to Winning**

- *Getting the Game* and other exercises
- Course overview and methodology
- Administrative matters
- Self-Introductions – Portrait of a Negotiator as a Law Student
- Just maybe and just for a baseline: a quickie negotiation
- Distribution of next week’s simulations

**Post Class:** Write Analytical Journal Entry relating to Class 1’s themes, experience, discussion, and readings. Be sure to include an initial assessment of your negotiation “base line” – what you suspect will be your negotiation strengths, weaknesses, and tendencies, based upon past experience. See course memorandum regarding the Analytical Journal expectations and other written/project assignments on which your grade will be based. [Note that the Sapolsky article assigned for next week, below, is intended to help you integrate the lessons from this first class. Thus, I suggest reading it before writing the analytical journal entry for this week’s class.]

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## **Preparation for Class 2 (August 26, 2019)**

**Read:** Confidential instructions for *Settle for More or Less* and *Zoewe’s Place*

*Negotiation Genius Text*, Introduction and Chapter One, pp. 1-49.

On TWEN:

**2.1** M. Wheeler. “Negotiation Analysis: An Introduction.” *Business Fundamentals As Taught at the Harvard Business School: Negotiation*. Harvard Business School Publishing, 2001. pp. 3-16.

**2.2** R. Sapolsky. “Playing Games: Theory Insights into Getting What You Want.” Alternatives 20 (Sept. 2002): pp.135, 162-63, 165. **Instructor’s note: this article is for integration of points in Class 1.**

**2.3** D. Orr and C. Guthrie. “Information, Expertise, and Negotiation: New Insight from Meta-Analysis.” Ohio State Dispute Resolution Journal vol. 21, issue 3 (2005) 597-628.

## **Class 2 –August 26, 2019: Competing, Distributing and Claiming: Aspiration? Anathema? Whether to play the game and how to play it!**

- Negotiate *Settle for More or Less*
- Negotiate *Zoewe’s Place* (and/or another case, TBA)
- Debriefing/Lecturette

**Post Class:** Write Analytical Journal Entry on Class 2’s themes, experience, discussion, and readings. **COMMIT OR NOT TO FINAL EMAIL NEGOTIATION PROJECT BY SEPTEMBER 9** (See course memo for more information. We will also discuss this in class.)

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*No Class on September 2 – Labor Day!*

### **Preparation for Class 3 (September 9, 2019)**

#### **Read:**

*Negotiation Genius* Text, Chapter Two, pp. 50 – 102 and Chapter 3, pp. 83-102.

Confidential Instructions for *Settle II*

We will negotiate *Settle II* in class, so please make sure you have read the case carefully.

On TWEN:

**3.1** John Carlisle and Neil Rackham. *The Behavior of Successful Negotiators: A Report Purcelleville*: Huthwaite, (1994).

**3.2** Ava J. Abromowitz, *Architect's Essentials of Negotiation*, 2d Ed., Chapter 6, The Communication Behaviors of Expert Negotiators.

**3.3** G. Richard Shell. *Bargaining for Advantage: Negotiation Strategies for Reasonable People*. Penguin Books, 1999. pp.201-34.

Prepare:

Be ready to negotiate *Settle II*.

### **Class 3 –September 9, 2019 Cutthroat, Cooperation, Creativity: How & when to play another way**

- Negotiate *Settle II*; debriefing/discussion
- Exercises in the essence of WITI (class handout)
- Time Permitting: Negotiate Enforcement Action or Discovery Dispute (handout)
- Ruminating, Reviewing, Revisiting and Practicing

**Post Class:** Write Analytical Journal Entry on Class 3's themes, experience, discussion, and readings.

#### **Note that the first THREE Journal Entries are due in Class 4 on September 16.**

Students MAY opt to turn in their first three Journal Entries on Friday, September 8. The sooner I receive them, the sooner I will REVIEW THEM AND PROVIDE COMMENTS, CRITIQUE and GUIDANCE. Only students who turn in journal entries on time will benefit from feedback. Also, failure to turn them in will negatively affect my assessment of your work in the course. While I don't formally grade these initial journal submissions, please do not submit an entry that is a rough draft or in "stream of consciousness" mode. They should represent your best efforts at

a cogent journal entry. I don't provide real feedback on submissions that don't demonstrate real effort on your part.

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## **Preparation for Class 4 (September 16, 2019)**

### **Read:**

*Negotiation Genius* Text: Chapter 5, “When Rationality Fails: Biases of the Heart,” pp. 125-155.

*Confidential Information for the Discount Marketplace problem. (We won't be negotiating these on the 16<sup>th</sup>, but you will be meeting to prepare with your assigned partner.)*

On TWEN:

**4.1** G. Richard Shell. “A Note on Your Personal Negotiation Style.” *Bargaining for Advantage*. New York: Penguin Books, 1999. pp. 244-46.

**4.2** Melissa Nelken. “Negotiation and Psychoanalysis: If I'd Wanted to Learn About Feelings, I Wouldn't Have Gone to Law School.” Journal of Legal Education 46 (1996): pp. 420-29.

**4.3** D. Shapiro. “A Negotiator's Guide to Emotion: Four laws to effective practice.” Dispute Resolution Journal 7 (Winter 2001): pp.3-8.

**4.4** Michael Wheeler. “Anxious Moments: Openings in Negotiations.” Negotiation Journal (April 2004): pp.155-68.

**4.5** “The Crucial First Five Minutes.” Negotiation Vol. 10; 10 (Oct. 2007) 1-3.

**4.6** “How body language affects negotiations.” Negotiation Vol. 11;11 (Nov. 2008) 4-7.

## **Class 4 – September 16, 2019 - PEOPLE, Personality, Conflict and the Emotional, Narrative and Performative Side of Negotiation**

- *Kilman Modes* Conflict Assessment Exercise
- The Performative, Narrative, Emotional side of Negotiation in Openings and Beyond
- Negotiation within Conflict, Within teams and Across the Table

- Meet with your Discount Marketplace partners.

**Post class:**

You are not required to write a journal entry reflecting on Class 4, but *you must write one* for EITHER Class #s 4, 6, or 7. This entry would not be due until October 21. I also anticipate that some of the themes in Class 4 will be discussed in the context of future entries.

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**Preparation for Class 5 – September 23, 2019**

**Read:**

Negotiation Genius, Chapter 4 “When Rationality Fails: Biases of the Mind,” pp. 104-124, and Review Chapter 3 “Investigative Negotiation,” pp. 83-102.

**NOTE: THIS CLASS WILL GO LATE – TO 7:30 P.M. to make up for a shortened class period the next week, due to the Professor’s Absence for the Jewish Holiday, next week, on Sept. 30. At least light supper snacks will be provided.**

**Class 5 – September 23, 2019: Optimizing Value without Numbers and With Analysis**

- Discount Marketplace done right
- Now, negotiate the draft agreement language
- Comparing and Analyzing the Value of Prose Outcomes
- Video Review and a real lawyering lens
- Communication strategies for full value
- Grand Analytical Summary

**Post Class:** A journal entry is required for this class, really on the themes, discussions, readings and experience in the Discount Marketplace exercise. **This will be due on October 14.**

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**Preparation for Class Six – September 30, 2019**

**Read:**

*Negotiation Genius* Text: Chapter 7, “Strategies of Influence,” pp. 159-178, and Chapter

8, Blind Spots in Negotiation,” pp. 175-195.

On TWEN:

**5.1** John Carlisle and Neil Rackham. *The Behavior of Successful Negotiators: A Report Purcelleville*: Huthwaite (1994). [This should be review]

Read: Assigned information for next week’s in-class recorded negotiations, *Salon Madness (or a new case, TBA)* and *Value Pharming*

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**Jewish New Year (a/k/a Rosh Hashanah – Prof Won’t be there!**

**Class 6– September 30, 2019 Deep Breath AND Diving Into Fishbowls & Movies**

- In-class Movie Making – STUDENT and LAWYER PRODUCTIONS – NEGOTIATION, OBSERVATIONS, and CRITIQUES in two new cases

**Post Class:**

Write a brief (one to two page) critique/analysis of your observed classmate pair’s negotiation.

Review the video of your own negotiation and select segments for review with the professor. Write a sentence or short paragraph on each segment, stating why you chose it for review – what you think it demonstrates.

With your negotiation counterpart, schedule a video review session with the professor, sometime between October 2-4. (A sign-up sheet will be available in class or on TWEN.)

Note re journaling: There is no journal entry required for this class. However, I anticipate that some of its themes will be integrated into the text of later journal entries and in eventual annotations to your first three entries. (Again, see the course memorandum for details.)

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**For those students electing to participate in an email negotiation exercise with law students from the University of Saskatchewan as part of your final project: As of the date of this syllabus edition, I do not have the precise deadlines from my counterpart professor at the University of Saskatchewan. However, the negotiations typically begin in early to mid-October, and need to be completed by approximately October 20 (based on last year’s schedule. Feedback to your negotiation counterparts is due a few days later, and participation in Round 2 (involving review of a transcript completed by another team) occurs several days after that. Final written submissions (to me) about this exercise are not due until the other final submissions at the end of the semester.**

**This syllabus “edition” covers only through fall break. I plan to formulate the post-break syllabus based upon class strengths, preferences, and future career inclinations. There are choices to be made: whether to focus on negotiation in a criminal practice context, multi-party negotiations, labor-management team negotiations, litigation case settlement, etc. Based upon what I learn from you in the first part of the semester, I will formulate the syllabus for post fall break.**

#### **University Information for All Students**

The Faculty Senate passed a resolution requesting that all faculty include the following information about mental health services and Title IX anti-discrimination policies on our syllabi:

#### **Counseling Services, Clifton Campus**

Students have access to counseling and mental health care through the University Health Services (UHS), which can provide both psychotherapy and psychiatric services. In addition, Counseling and Psychological Services (CAPS) can provide professional counseling upon request; students may receive five free counseling sessions through CAPS without insurance. Students are encouraged to seek assistance for anxiety, depression, trauma/assault, adjustment to college life, interpersonal/relational difficulty, sexuality, family conflict, grief and loss, disordered eating and body image, alcohol and substance abuse, anger management, identity development and issues related to diversity, concerns associated with sexual orientation and spirituality concerns, as well as any other issue of concerns. After hours, students may call UHS at 513-556-2564 or CAPS Cares at 513-556-0648. For urgent physician consultation after-hours students may call 513-584-7777.

#### **Counseling Services, Blue Ash Campus**

UC Blue Ash Counseling Services provides high quality integrated health, counseling, and wellness services. **Mental Health and personal counseling services are free of charge to students who are matriculated as UC Blue Ash College students.** Services address student needs such as self esteem, family conflict, loss and grief issues, adjusting to life's challenges, relationship problems, eating disorders, physical and/or emotional abuse, and domestic violence. Students who want an initial meeting with a counselor can call (513) 745-5670 or stop by Room 140 Muntz Hall to schedule an appointment. If after hours, please call CAPS Cares (main campus) using the 24 Hour Phone Consultation Line at 513-556-0648.

#### **Counseling Services, Clermont Campus**

The Compass Counseling Center provides students assistance in helping to deal with life's stressors and adjustment to college life. **All services provided to UC Clermont students are free and confidential.** Some of the most common issues addressed at the center include transition to college life, stress from home, classroom performance, depression, anxiety, relationship problems, grief and loss, and substance abuse. Students are welcome and encouraged to walk into the Compass Counseling Center located in the Student Services Building, Room 201. Students may contact the office by calling (513) 732-5263. If after hours, please call CAPS Cares (main campus) using the 24 Hour Phone Consultation Line at 513-556-0648.

**Title IX**

Title IX is a federal civil rights law that prohibits discrimination on the basis of your actual or perceived sex, gender, gender identity, gender expression, or sexual orientation. Title IX also covers sexual violence, dating or domestic violence, and stalking. If you disclose a Title IX issue to me, I am required forward that information to the Title IX Office. They will follow up with you about how the University can take steps to address the impact on you and the community and make you aware of your rights and resources. [Their priority is to make sure you are safe and successful here.](#) You are not required to talk with the Title IX Office. [If you would like to make a report of sex or gender-based discrimination, harassment or violence, or if you would like to know more about your rights and resources on campus, you can consult the website \[www.uc.edu/titleix\]\(http://www.uc.edu/titleix\) or contact the office at 556-3349.](#)