

COLUMBIA LAW SCHOOL

NEGOTIATION WORKSHOP

FACULTY DIRECTOR: Avery Katz

SPRING 2023 TEACHING FACULTY: Avery Katz,
David Ross, Edward Frischling, Jay Allen Hewlin,
Katerina Yiannibas, Mavis Fowler-Williams

SYLLABUS — SPRING 2023

REQUIRED TEXTS

1. *Difficult Conversations: How to Discuss What Matters Most*. Douglas Stone, Bruce Patton, and Sheila Heen. 2d edition, 2010.
2. *Beyond Winning: Negotiating to Create Value in Deals and Disputes* by Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello, 2000.
3. Coursepack of supplementary readings. Available for download on class website. Some items are provided via link to Columbia University Libraries in order to save on copyright fees; these are indicated by an asterisk [*].

INTRODUCTION TO NEGOTIATION

Class 1 Welcome and Opening Exercises (Thu 1/19 & Fri 1/20)

Required readings:

- Mnookin et al., *Beyond Winning*, Chapters 1–3.

In-Class Exercise: *Win as Much as You Can*. No preparation required.

Assignment: Distribute roleplay to negotiate in Class 2 (*Sally Soprano*).

Weekly Journal: Due by 11:59 pm EDT on Monday, January 23.

- Submit via CourseWorks; see journal memo for detailed instructions.

PART I: THE FIRST TENSION: CREATING VS. DISTRIBUTING VALUE

Class 2: Exploring the First Tension (Thu 1/26 & Fri 1/27)

Required readings:

- Mnookin et al., *Beyond Winning*, Chapters 1–3 (if not read for Week 1).
- Lax and Sebenius, *3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals* (2006), pp. 119-134 (“Move Northeast”).
- Craver, *Effective Legal Negotiation and Settlement* (2016), pp. 25–29 (“Verbal and Nonverbal Communication”).
- Fisher and Shapiro, *Beyond Reason: Using Emotions as You Negotiate* (2005), pp. 169-182 (“On Being Prepared”).

Optional readings:

- Conger, The Necessary Art of Persuasion, *Harvard Business Review* (1998). [*]

In-Class Exercise: *Sally Soprano*.

- Be sure to read and prepare in advance. Instructions and role assignments to be posted on iDecisionGames.com.

Weekly Journal: Due by 11:59 pm EDT on Monday, January 30.

- Please review in-class handouts and journal memo before beginning to write.
- Please submit your journal using the assignment page on CourseWorks; our comments will be returned to you on the same page.

Class 3: Distributing Value (Thu 2/02 & Fri 2/03)

Required readings:

- Lax and Sebenius, *3-D Negotiation*, pp. 181-203, 228-233.
- Goodpaster, Rational Decision-Making in Problem Solving Negotiation: Compromise, Interest-Valuation, and Cognitive Error, *Ohio State J. Dispute Resolution*, pp. 344–356.
- Craver, *Effective Legal Negotiation and Settlement*, (2016), pp. 103-113 (“The Information Stage”).

Optional readings:

- Schneider, Productive Ambition, in *The Negotiator’s Desk Reference*, vol. 1 (2017), pp. 321-328.

In-Class Exercise: *Used Car*.

- Be sure to read and prepare in advance. Preparation to include 3 Tensions Prep Sheet (posted on CourseWorks).

Weekly Journal: Submit by 11:59 pm EDT on Monday, February 6.

- Please review sample Sally Soprano journals before beginning to write.

PART II: THE SECOND TENSION: BETWEEN EMPATHY AND ASSERTIVENESS

Class 4 Managing the Second Tension: Part I (Thu 2/09 & Fri 2/10)

Required readings:

- Stone, Patton, and Heen, *Difficult Conversations*, Introduction & Chapters 1-4.

Optional readings:

- Stone, Patton, and Heen, *Difficult Conversations*, Chapters 5-6.
- Nelken, Negotiation and Psychoanalysis: If I'd Wanted to Learn About Feelings, I Wouldn't Have Gone to Law School, 46 *J. Legal Education*, (1996), pp. 420- 429.
- Brown, Saving Face, *Psychology Today*, (1971), pp. 56–59.
- Adler et al., Emotions in Negotiation: How to Manage Fear and Anger, *Negotiation Journal* (April 1998), pp. 161, 174-177.
- Babcock and Laschever, *Women Don't Ask* (2007), pp. 1–10; 57–58.

In-Class Exercise: *Finish Line* or *Sibbing Riflery*.

- Prepare before class using Triad worksheets.

Weekly Journal: Due by 11:59 pm EDT on Monday, February 13.

Class 5: Managing the Second Tension: Part II (Thu 2/16 & Fri 2/17)

Required readings:

- Stone, Patton, and Heen, *Difficult Conversations*, Chapters 7–12.

Optional readings:

- Fisher and Shapiro, *Beyond Reason* (2005), pp. 15-21.
- Frenkel and Stark, *The Practice of Mediation*, pp. 40-46.
- Ury, *Getting Past No: Negotiating Your Way from Confrontation to Cooperation* (revised edition, 1993), pp. 3–14.

Pre-Class Exercise: *Race Horse*.

- Negotiate on your own and come to class prepared to debrief.

Weekly Journal: Due by 11:59 pm EDT on Monday, February 20

Class 6: Negotiation Ethics (Thu 2/23 & Fri 2/24)

Required readings:

- Mnookin et al., *Beyond Winning*, Chapter 11.
- Excerpts from Model Rules of Professional Responsibility, New York Rules of Civil Practice, Restatement of Contracts, and Restatement of Torts
- Shell, Ethics: Bargaining with the Devil Without Losing your Soul, in *Bargaining for Advantage* (3d. ed. 2018), pp. 185-206.
- Robbennolt and Sternlight, Drawing On Psychology To Negotiate Ethically, in *The Negotiator's Desk Reference*, vol. 1 (2017), pp. 503-511.

In-Class Exercise: *Valdez v. Ace Auto Repair* or *DONS*.

Weekly Journal: Due by 11:59 EDT on Monday, February 27.

PART III: THE THIRD TENSION: BETWEEN PRINCIPALS AND AGENTS

Class 7: Introduction to Client Counseling (Thu 3/02 & Fri 3/03)

Required readings (to be completed before your client counseling session):

- Mnookin et al., *Beyond Winning*, Introduction to Part III (review), Chapter 7.
- Aaron, Client Science: Bad News and the Fully Informed ADR Client, *Alternatives to the High Cost of Litigation* (December 2014), 32:11, pp. 167– 172.
- Holub, Goals in Interviewing and Counseling a Client, (2006).
- Robbennolt, Apology — Help or Hindrance, *Dispute Resolution Magazine* (Spring 2004), pp. 33-34.

Pre-Class Exercise: Eazy's Garage

- Part 1: Client meeting. Sign up for group counseling sessions with your TA.
- Part 2: Negotiate with counterpart's lawyer on your own, and come to class ready to debrief.
- Reporting memo: After you negotiate, please compose an email to your client/TA, presenting the results of your negotiation. Submit this email via the CourseWorks assignment page by 6 pm on the day before class.

Weekly Journal: Due by 11:59 pm EDT on Monday, March 6.

Class 8: Negotiating in Teams (Week of 3/6-3/10)

Required readings:

- Mnookin et al., *Beyond Winning*, Chapters 4, 6, 7, 8 (including Intro to Part III)
- Thompson, *The Heart and Mind of the Negotiator* (5th ed. 2015), pp. 240, 243.)
- Malhotra, *Four Strategies for Making Concessions*, Harvard Business School Working Knowledge (2006).
- Craver, *Effective Legal Negotiation and Settlement* (2016), pp. 35-53 (“Nonverbal Communication”).

Optional readings:

- Guthrie, Principles of Influence in Negotiation, *87 Marquette L. Rev.*, (2004), pp. 829–837.
- Jackson, Kaplow et al, *Analytical Methods for Lawyers* (2017), pp. 197-204

Self-scheduled exercise: *Waltham v. Foster* or *Discount Market*

- 2x2 recorded negotiation sessions with individualized feedback and coaching (with instructions and role assignments posted on iDecisionGames.com.).
- Sign up in advance for a specific time slot; and be sure to confer with your negotiation partner on strategy and tactics before arriving for your session.
- Please keep our usual class time available as a fallback option, in case no other time is feasible.

Weekly Journal: No journal due this week.

PART IV: SKILLS DEVELOPMENT

Class 9: Counseling and Representing Business Clients (Fri 3/24)

Required readings:

- Mnookin et al., *Beyond Winning*, Chapters 5 and 8.
- Maister, Green, and Galford, *The Trusted Advisor* (2000), pp. 17-36.
- Fisher, Negotiating Power, *27 American Behavioral Scientist* 149–166 (1983).

Pre-Class Exercise: *Brookside* (joint with MBA's)

- You will be provided with your client's name and contact information the week before the exercise. You must meet with the client **before the negotiation** to discuss interests, tactics and strategy.
- Before that meeting, please prepare and send your client a **brief memo** that analyzes the issues you will discuss when you meet (with cc to your TA and professor).
- The negotiation itself should be conducted prior to class, at the mutual convenience of the parties, at any time up until **6 PM on Thursday, March 23d**.
- Debrief to take place at 11:30 am, Friday, March 24th, location TBA.
- Small group debrief to begin at 11:30. Please assemble in the classroom together with the people with whom you negotiated the exercise.
- Large group debrief to begin at 11:45.

Weekly Journal: Due by 11:59 pm New York City time on Monday, March 27.

Class 10: Negotiating at a Distance (Thu 3/30 & Fri 3/31)

Required readings:

- Nadler, Rapport in Legal Negotiation: How Small Talk Can Facilitate E-mail Dealmaking, *Harvard Negotiation Law Review* (Spring 2004), pp. 223–251 ((pp. 235-249 optional)).
- Schneider and McCarthy, Choosing Among Modes of Communication, in *The Negotiator's Desk Reference*, vol. 2 (2017), pp. 107-114.

Pre-Class Exercise: *The Offer* (to negotiate over e-mail before class).

- Send your first email no later than 8 pm on Tuesday, March 28.
- Finish the negotiation, and submit a copy of your email correspondence to the CourseWorks assignment page, no later than 6 pm of the day before class.
- Please bring a copy of your e-mail correspondence when you come to class.

Weekly Journal: Due by 11:59 pm EST on Monday, April 3.

Class 11: Negotiating Diversity and Identity (Thu 4/6 & Fri 4/7)

Required readings:

- Kahneman, Of 2 Minds: How Fast and Slow Thinking Shape Perception and Choice, from <https://www.scientificamerican.com/> (June 15, 2012).
- Thompson, *The Heart and Mind of the Negotiator* (5th ed. 2015), pp. 253-260, 262-263, 264-275, 276-278, 279-282, 283-284 (“Cross-Cultural Negotiation”).

Optional readings:

- Bear and Babcock, Gender Differences in Negotiation, in *The Negotiator's Desk Reference*, vol. 1 (2017), pp. 595-603.
- Green, Negotiating While Black, in *The Negotiator's Desk Reference*, vol. 1 (2017), pp. 563-577.
- Meyer, Getting to Sí, Ja, Oui, Hai, and Da: How to Negotiate Across Cultures, *Harvard Business Review* (December 2015). [*]
- Gladwell, The Ethnic Theory of Plane Crashes, from *Outliers: The Story of Success* (2008), pp. 177-82, 194-198, 202-206, 209-223.
- Tudy-Jackson, Intergenerational Relationships Can Be Combat Zones or Constructive Opportunities: The Choice is Yours, *The Scrivener*, 18, No. 4 (Winter 2009), pp. 40-44.
- McIntosh, White Privilege: Unpacking the Invisible Knapsack (1989), and Some Notes for Facilitators (2010).

Pre-Class Exercise: *Project Implicit* (to be completed prior to class).

- Please go to <https://implicit.harvard.edu/implicit/education.html>, read the introduction to the project and take one or more of the tests.
- If you have previous experience with this project, you should choose a test that you have not already taken.

Weekly Journal: Due by 11:59 pm EST on Monday, April 10th.

Class 12: Multiparty Negotiations (Fri 4/14)

Required readings:

- Mnookin et al., *Beyond Winning*, Chapter 12.
- Lewicki et al, Multiparty Negotiation, from *Negotiation*, 2nd Ed., Irwin, (1994) pp. 277–291.
- Thompson, Multiple Parties, Coalitions, and Teams, from *The Mind and Heart of the Negotiator* (2015), pp. 217-228.

Optional readings:

- Ames, Larrick, and Morris, Scoring a Deal: Valuing Outcomes in Multi-Issue Negotiations, *Columbia CaseWorks*, pp. 1–7.

In-Class Exercise: *Harborco* (joint with all sections)

- Please note special day and time: Friday at 10:00 am sharp for all sections.
- Students in §2 who have a scheduling conflict may negotiate early and view a recording of the group session.

Weekly Journal: Due by 11:59 pm EST on Monday, April 17.

PULLING IT ALL TOGETHER

Class 13: Barriers to Agreement and Wrap Up (Thu 4/20 & Fri 4/21)

Required readings:

- Mnookin et al., *Beyond Winning*, Chapter 6 (review); Conclusion, pp. 315-323.
- Other short readings to be posted on CourseWorks.

Final project: *Capstone Negotiation*

- 90-minute 1x1 negotiation, followed by 30-minute debrief, to be scheduled at parties' mutual convenience anytime during study period or the first week of exam period.
- Each student pair is responsible for video recording their negotiation, and jointly producing a brief annotated outline of its most significant moments. Instructions on how to do this will be provided in a memo to be posted on CourseWorks later in the term.
- Each individual student is then responsible for writing a 4000-5000-word report that analyzes the negotiation..
- Video recordings, annotated outline, and individual reports to be submitted via CourseWorks by **Monday, May 1, 2023; at 5pm.**