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OH: Thursdays 2:00 - 4:00
and by appointment

Spring 2002
Course # 6385
Section # 4550

Negotiation

I. Overview

Most lawyers, irrespective of their specialties, must negotiate. This course aims to improve both your understanding of negotiation and your effectiveness as a negotiator. Drawing on work from a variety of research perspectives, the readings will provide frameworks for understanding negotiation. Within class, you will spend a significant amount of time in simulated negotiation role plays. Homework will typically consist of preparing for the next class's negotiation, assigned readings, and (roughly every other week) writing a journal entry. There will be one required paper, but no final exam. Throughout, emphasis will be placed on developing awareness of how one can improve as a negotiator and on helping others improve as negotiators. While there is a fair bit of work, most previous students have found the course to be enjoyable and rewarding.

II. Course Materials

1. Texts. The main texts for the course are:

Robert H. Mnookin, Scott R. Peppet and Andrew S. Tulumello, *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (Harvard 2000) (BW)

Roger Fisher, William Ury, and Bruce Patton, *Getting To Yes: Negotiating Agreement Without Giving In* (2nd edition, Penguin, 1991) (GTY)

You will also have some reading assignments from:

Douglas Stone, Sheila Heen, and Bruce Patton, *Difficult Conversations: How to Discuss What Matters Most* (Viking 1999) (DC)

All should be available at the law school bookstore and have also been placed on reserve at the library. I strongly recommend buying BW and GTY. The other readings for the course indicated in this syllabus have been put on reserve at the law library. Most are excerpts from journal articles or books.

2. Simulated Negotiation Exercises. At the end of most classes, I will distribute

simulated negotiation role play exercises for the following class, with different roles for different people. Though the exercises will be distributed in class, they are copyrighted, and *you must purchase a card from the law school bookstore to cover their cost*. Before receiving the materials, you will have to present this card in class. When you receive role play materials, please do not share confidential instructions with students having other roles.

III. Course Requirements

1. Attendance & Preparation. Your attendance and preparation are critical in this course. In the majority of classes, you will be paired to negotiate with another student. Hence, if you are absent, your absence will preclude not only your participation that day, but also that of your partner. The same applies to preparation. If you come to class unprepared, not only will you lose out, but so will your partner(s) for that day. If you do not expect to be able to attend class consistently and prepared, you should not take this course.

2. Effort. Learning to be a better negotiator is not something that can be “done to” you. You must work at it yourself. While others can offer you advice and ideas to think about, what you learn from this course in large part will depend upon your effort. The more you put in, the more you will get out.

3. Helpfulness to Your Fellow Students. Often the best person to give you advice on how to be a better negotiator is the person with whom you have just negotiated. Hence, I ask that you give feedback to one another and assist one another in learning as constructively as you can. The more you help one another in learning, the richer your experiences will be.

4. A Willingness to Experiment. As far as I know, there is no one right way to negotiate. Rather there are different approaches and styles which are sometimes more effective and sometimes less effective. My goal in this course is not to teach you a particular style of negotiation, but rather to give you the opportunity to experiment, expand your negotiation repertoire, and find ways that work for you.

5. Participation. My general educational philosophy is that dialogue is one of the best vehicles for learning. This is a discussion course, and I hope that everyone (myself included) will learn by sharing ideas together. Also, if you have creative ideas about how we can explore the materials in interesting and fun ways, please let me know. I welcome your suggestions.

6. Written Requirements.

A. Journals. You are required to write a six short journal entries over the course of the semester reflecting upon your negotiations during that week, or, should you be so inclined, on some other negotiation-related topic. These entries should be about 2-3 pages. A further description will be provided in “A Note About Journals.” *Entries for a given week are due at my office by noon on the following Monday*. Also, at the end of the course, you are required to submit one longer, 5- to 10-page final journal entry in which you reflect upon both your experience in the course as a whole as well as the three

central texts.

B. Research Paper. At the end of the course, you must also submit an 8- to 10-page paper analyzing a topic of your choice related to negotiation. While you are expected to do some independent research, your paper will be judged principally on the quality of your analysis. I will discuss the details of this as the course progresses.

IV. Grading

Grading will be based upon your in-class performance (1/3), journal entries (1/3), and research paper (1/3). Your grade will not be based upon how the outcomes of your negotiation simulations compare to those of other students, but will rather be based upon what you learn in the course, as demonstrated in your writing and in-class performance. There will be no final exam.

Syllabus

I. INTRODUCTION

Day 1. Overview
Oil Pricing

Day 2. Self-Awareness
Law Library

Assignment: Prepare to negotiate *Law Library*.
Read BW, "Introduction," pp. 1 - 8.
Read GTY, chs. 1 - 3, pp. 1 - 55.

II. CREATING AND DISTRIBUTING VALUE

Day 3. Creating Value
Sally Suprano

Assignment: Prepare to negotiate *Sally Suprano*.
Read GTY, chs. 4 - 5, pp. 56 - 94.

Day 4. Sources of Value
Discount Marketplace

Assignment: Prepare to negotiate *Discount Marketplace*.
Read BW, ch. 1, pp. 9 - 43.

Day 5. Distributing Value
Redstone

Assignment: Prepare to negotiate *Redstone*.
Read GTY, chs. 6 - 7, pp. 95 - 128.
Read Thomas C. Schelling, "An Essay on Bargaining," in his *The Strategy of Conflict* (Cambridge : Harvard University Press, 1980) ch. 2, pp. 21 - 52.
Read Gerald Wetlaufer, "The Limits of Integrative Bargaining," 85 *Geo.L.J.* 369 (1996).

Day 6. Hard Bargaining
The Bullard Houses

Assignment: Prepare to negotiate *The Bullard Houses*.
Read GTY, chs. 8 - end, pp. 129 - 148.
Review BW, pp. 24 - 25.

Day 7. Litigation Analysis
Patriot National

Assignment: Prepare to negotiate *Patriot National*.
Read BW, ch. 4, pp. 97 - 126.

Day 8. Preparation
Powerscreen

Assignment: Prepare to negotiate *Powerscreen*.
Read BW, ch. 5, pp. 127 - 155.

III. EMPATHY AND ASSERTIVENESS

Day 9. Introducing Empathy and Assertiveness
Listening and Following Exercises

Assignment: Read BW, ch. 2, 44 - 68.

Day 10. Barriers to Conflict Resolution: Partisan Perceptions
Role Reversal Exercise

Assignment: Prepare a scenario for Role Reversal Exercise.
Read BW, ch. 6, pp. 156 - 172.
Read DC, chs. 1 - 4, pp. 1 - 82.

Day 11. Multiparty
MAPO

Assignment: Prepare to negotiate *MAPO*.

Read BW, ch. 12, pp. 295 - 314.

Day 12. Multiparty
Author! Author!

Assignment: Prepare to negotiate *Author! Author!*.
Reviews of *MAPO* videos.

Day 13. Conflict Propensities
Conflict Tendencies Exercises

Assignment: Read Don Peters, "Forever Jung: Psychological Type Theory, The Myers-Briggs Type Indicator and Learning Negotiation," 42 Drake Law Review 1 (1993).
Read *DC*, chs. 5 - 6, pp. 83 - 128.

Day 14. Gender in Negotiation
Weathers and Evans

Assignment: Prepare to negotiate *Weathers and Evans*.
Read Student Paper, Katherine Tai, "Possible Effects of Gender Differences on Negotiations: An Explorations," (1999).
Read Deborah M. Kolb and Gloria G. Coolidge, "Her Place at the Table: A Consideration of Gender Issues in Negotiation," in *Negotiation Theory and Practice*, edited by J. William Breslin and Jeffrey Z. Rubin (Cambridge : Program on Negotiation at Harvard Law School, 1995) pp. 261- 278.

Day 15. Difficult Conversations

Assignment: Read *DC*, chs. 7 - 12, pp. 129 - 234.

IV. PRINCIPAL AND AGENT TENSIONS

Day 16. Negotiation and Clients
Sue or Settle

Assignment: Prepare to play *Sue or Settle*.
Read BW, chs. 7, 8 pp.173 - 203.

Day 17. Interviewing and Counseling
Eazy's Garage

Assignment: Prepare to negotiate *Eazy's Garage*.
Read BW, ch. 9 - 10, pp. 224 - 272.

Day 18. Ethics I
PONS

Assignment: BW, ch. 11, 274 - 294.

Day 19. Ethics II: Who Are You?

Assignment: Read Jonathan R. Cohen, "When People are the Means:
Negotiating With Respect," 14 *Georgetown Journal of Legal Ethics* 739-802
(2001).

Day 20. Pulling the Pieces Together
Meeting *Ellsworth* Clients.

Assignment: Prepare to negotiate *Ellsworth*.

Day 21. Negotiate Ellsworth

Assignment: TBA.

V. GOING FORWARD

Days 22 - 27. Student Presentations

Assignments: TBA.

Day 28. Going Forward