Prof. Jonathan R. Cohen Spring 2020

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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 negotiations, assigned readings, and some written assignments. There are a number of written assignments, but no final exam. 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 textbooks for the course are:

*Negotiation: Processes for Problem-Solving* by Carrie Menkel-Meadow, Andrea K. Schneider and Lela P. Love (2nd edition, Aspen Pub., 2014).

*Getting To Yes: Negotiating Agreement Without Giving In* by Roger Fisher, William Ury, and Bruce Patton (Penguin, any edition is fine).

From time to time, I may refer to additional supplemental readings. I will place those on reserve at the library.

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, most of them are copyrighted, and *you must purchase the right to receive these materials at the law school bookstore.* When you receive role play materials, please do not share confidential instructions with students having other roles. Additionally, *if you miss a class, please stop by my office (Holland 330) to pick up the materials you will need to prepare for the following class meeting.* I will leave them outside my office door with your name written upon them.

**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 may also preclude 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. Class will start promptly at the scheduled time. Students arriving late will receive only partial credit for attendance that day. Please note that ABA Standards require that students devote approximately 120 minutes of out-of-class preparation for each class hour of instruction. This will of course vary somewhat from week to week.

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. Readings. Attached is a list of assigned readings. Students are expected to have done the assigned readings prior to class.

7. Electronic Devices. Except for students making presentations, the use of laptop computers and other electronic devices is prohibited. Additionally, no recording of any type is permitted without my advance written permission.

8. Academic Honesty. Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

9. Written Requirements.

A. Regular Journals, Negotiation Plan & Final Journal. (1) You are required to write four short, regular journal entries over the course of the semester reflecting on your negotiations, or, should you be so inclined, on some other negotiation-related topic. These entries should be about 2-3 pages (12-point font, double-spaced). The first journal entry is due by our second class meeting on January 22. The subsequent journal entries should be handed in contemporaneously as you write them (i.e., the week following the exercise about which you are writing), but must be turned in no later than April 1. For further information, please see “A Note about Journals”. (2) You are required to write a 2-3 page negotiation plan memo for the Bullard Houses negotiation. This is due in class on January 29 (the day we will be negotiating Bullard Houses.) This memo should be written from the perspective of a junior associate who has been tasked by a senior associate with developing a plan for the negotiation. (3) You are required to write one longer, approximately 5-page final journal entry in which you reflect upon your development as a negotiator in the course as a whole. This is due in class on April 8. Except in extraordinary circumstances, please submit hard copies of these items in class rather than emailing them.

B. Research Project. At the end of the course, you must submit an approximately 8-10 research paper or other written project approved by me (e.g., a simulated negotiation exercise and teaching note that you developed) analyzing a topic of your choice related to negotiation. You must also make a presentation to the class on your subject. While you are expected to do some independent research, your paper will be judged principally on the quality of your analysis. Your research paper isdue April 15. Except in extraordinary circumstances, late papers will receive automatic grade reductions.

**IV. Course Objectives and Learning Outcomes**

At the conclusion of this course, you should possess increased knowledge of theoretical constructs underlying negotiation and empirical research concerning negotiation. You should be able to appropriately use integrative and distributive negotiation skills, manage interpersonal aspects, including emotional and psychological aspects, of negotiation, and manage cultural issues in negotiation. You should be able to manage complexities related to negotiating on behalf of clients. You should also have an appreciation of some of your individual strengths and weaknesses as a negotiator and of ethical constraints applicable to lawyers when negotiating.

**V. Disability Accomodations**

Students requesting classroom accommodation should register with the Office of Disability Resources.  The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation. For further information, see <https://www.dso.ufl.edu/drc/>.

**VI. Grading**

The course will be letter graded based on your in-class performance (1/3), journals, negotiation plan and final journal (1/3), and research paper (1/3). There is no final exam. For questions about grading and other academic policies, please refer to the law school’s academic policies, available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies>. For questions about delays in submitting works, please refer to the law school’s policy, available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#12>.

The grading scale for the course is:

Grade Point Grade Point Grade Point

A (Excellent) 4.0 C+ 2.33 D- 0.67

A- 3.67 C (Satisfactory) 2.00 E (Failure) 0.0

B+ 3.33 C- 1.67

B (Good) 3.00 D+ 1.33

B- 2.67 D (Poor) 1.00

**VI. Student Course Evaluations**

Students can provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will receive notice of the specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

**Syllabus**

Day 1: Introduction

*Oil Pricing Exercise*

Reading Assignment: NPPS, ch. 1 (pp. 1-40)

Day 2: Creating and Distributing Value

 *Law Library*

 *Discount Marketplace*

 Reading Assignment: *Getting to Yes* (read the entire book)

Day 3: Creating and Distributing Value (cont.)

 *The Bullard Houses*

 *Moving to Minsk?*

Reading Assignment: NPPS, ch. 4 (pp. 117-160) & ch. 5 (pp. 161-202)

Day 4: Perception, Inference & Communication

*Weathers v. Evans*

Reading Assignment: NPPS, ch. 3 (pp. 79-116) & pp. 366-380 (on gender in negotiation)

Day 5: Working with Your Client

 *Vernon/Green*

Reading Assignment: NPPS, ch. 2 (pp. 41-77)

Day 6: Negotiation Ethics

 *DONS*

Reading Assignment: NPPS, ch. 11 (only pp. 391-430)

Day 7: Values & Culture

 *Ellis v. MacroB*

Reading Assignment: NPPS, ch. 7 (pp. 233-274) & ch. 10 (pp. 353-366 & 381-390)

Day 8: Multiparty Negotiations & Principal-Agent Tensions

 *Author! Author!*

*Sue or Settle*

Reading Assignment: NPPS, ch. 13 (pp. 467-508)

Day 9: Working with Your Counterpart: Understanding & Emotions

 *Role Reversal Exercise*

 *What Did You Say?*

Reading Assignment: NPPS, ch. 8 (pp. 275-314)

Day 10: Complex Negotiations

 *MAPO*

There is no reading assignment. Students should meet with partners prior to class to strategize.

Days 11-13: Student Presentations

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**A Note about Journals**

Writing a journal entry is a personal process. There is no one right way to do it. Entries vary from person to person and from journal to journal. The overarching purpose of the journal is to provide a space for you to *reflect* on your negotiations or, occasionally, on other negotiation-related topics. Don’t spend your time recording play-by-plays of what occurred during your negotiations. Rather focus on your insights about yourself as a negotiator and negotiation generally. Analyze what went on, don’t simply describe it. For example, a good entry may pick a specific part of a negotiation and use it as a window for looking at a broader issue. Some students may draw upon the readings when they write their journals, but many students do not.

A typical entry should be about two to three pages, type-written, double-spaced, but if you have more or less to say in a given journal, do not feel restricted by that guideline. Unless special circumstances make it necessary, please do not submit your journal entries by email but turn in a hard copy in class.

While your journal entries will be kept confidential, some students can be distracted by the prospect of having their journals read. Am I writing what the instructor wants to hear? Do I have to do what the instructor suggests to get a good grade? Let me assure you that my central interest is that you reflect deeply about what you do. Though I may write questions or comments on your entries, what you do with that feedback, as well as with other feedback that you receive in the course, is up to you. Indeed, I very much want people to make their own choices about what types of negotiators they want to be.

At root, your journal is your space. Write in it what you want to.

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**A Note about Research Papers**

There is no final exam, however, you are required to write an approximately 8-10 page research paper about some negotiation-related topic or other written project approved by me (e.g., a simulated negotiation exercise and teaching note that you developed). You must also make a presentation to the class on your subject. In contrast to your journals, this paper should not be about yourself as a negotiator, though of course your experiences may inspire your choice of topic. While you are expected to do some independent research, your paper will be judged principally on the quality and depth of your analysis. Students in previous years have written papers on topics such as the use of visual exhibits in negotiation, gender in negotiation, a specific international negotiation, humor in negotiation, body language in negotiation, online negotiations, ethical aspects of negotiation, and culture in negotiation. In short, you are free to write about a topic of your choice provided that it relates to negotiation. If you are doing a regular research paper, you do not have to have your final paper topic pre-approved by me. However, if you would like to speak with me about it, I am happy to. All citations should conform to the current Bluebook (*The Bluebook: A Uniform System of Citation*) standards for law review articles. Also, please use footnotes at the bottom of the page rather than endnotes.