**Negotiation**

**Spring, 2022**

**Joan Stearns Johnsen**

Mondays: 2:15 – 5:15

Room: MLAC 106

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**Class Syllabus and Policies**

**Required Course Materials:**

*Getting to Yes: Negotiating Agreement Without Giving In*, Roger Fisher, William Ury, and Bruce

Patton. (Penguin Books, 2011), *Negotiation Genius*, Deepak Malhotra and Max H. Bazerman (Bantam Dell, 2008). There will also be supplemental readings posted to Canvas and you will also be required to watch the movie *A Civil Action* (1998) directed by Steven Zaillian, starring John Travolta and Robert Duvall. One copy is available in the library on DVD. Streaming versions of the moving can be rented on YouTube, Amazon, Apple TV, and other sites for a nominal charge (approx. $2.99, last I looked). Please watch the movie in preparation for our November 16, class. This movie will also help you to prepare for the final exam. You will also be required to purchase Harvard Program on Negotiation role plays from the Bookstore. You must pay for these role play materials in advance. We will distribute them electronically via canvas throughout the semester.

**Description of the Course, Objectives, and Learning Outcomes**:

Negotiation is a skill that everyone uses routinely. All lawyers engage in negotiation as part of their work regardless of the area of practice in which they specialize. Just as importantly, almost all interpersonal interaction involves some aspect of the skills we will cover in negotiation.

In this course you will learn the foundational theory underlying negotiation, as well as communication, culture, and psychological factors that impact negotiation. Most importantly, through your roleplay exercises you will learn how the theory applies to practice.

At the conclusion of this course, you should be able to understand how negotiation fits into the continuum of dispute resolution processes; manage the emotional and psychological aspects of negotiation; and manage communication and cultural issues in negotiation and analyze and negotiate more effectively. Students will progress from intuitive negotiators to more intentional bargainers. You should also have an appreciation of the ethical constraints applicable to lawyers when negotiating.

**Expectations:** This course is a three credit hours. Please note that ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in class instruction. Therefore, expect that you will spend six hours out of class time preparing for each Monday class by reading and importantly by preparing for the in-class role play exercises.

**To succeed in this class, you must spend a sufficient time reading and familiarizing yourself with the role plays, some of which are quite complex**. With some of the role plays, you may be working as part of a team and will need to meet with a classmate outside of class time as part of your preparation. You may also need to do some legal or factual research or analysis of legal standards or other data as part of your preparation. You do a disservice to the class and to your classmates if you do not prepare for these role plays. You may also lose points towards your participation score if it appears that you try to do the preparation during the role play itself.

You will also be required to complete and submit your negotiation preparation worksheets **starting with the 5th week of class.** These worksheets will help you to prepare. Although your preparation worksheets will not be graded, you must submit them as part of your participation grade. (Where there are two negotiations, prepare one for each negotiation). It is possible that on weeks when we have two negotiations scheduled, we will only complete one. If that happens, we will often carry the negotiation to the next week.

**Simulated Negotiation Exercises**: Much of our class time will be spent engaged in simulated negotiation role play exercises. You will receive facts and confidential instructions for your role electronically. You will also be matched randomly. You are not to share your confidential role play instructions although you may decide to disclose information contained within those instructions as part of your negotiation strategy.

**Guidelines for participation in roleplays**:

1. Take the roleplay seriously; what you (and other participants) get from the roleplay is directly related to the effort you put into it.

1. If you are assigned to play the role of a client or party, do not deviate from the facts that are in either the general or your confidential instructions. You may, however, “fill in the blanks” in playing your role.

1. Play the role as a party the way you think the person in the situation would play it – not necessarily as you personally would respond.

1. If you are representing a party, take time to confer with your client before the negotiation to learn as much as you can about their matter and to be sure you understand what they want as an outcome.

1. Feel free to experiment and try different approaches to negotiation. This is the time to take a risk.

1. Do not share your confidential information with the other participants until after the roleplay is completed.

1. Enjoy the roleplay experience. No one says you can’t have fun playing roles.

**Instructions for Observers:** From time to time, you may be asked to play the role of observer. This is an excellent opportunity to learn. As an observer you are not immersed in the exercise as a participant and can have perspective of both sides. Take full advantage of this opportunity. There are guidelines posted on Canvas. Here are some additional suggestions.

1. Please help get exercise started on time and stop them on time.

1. Don’t interrupt role play unless to remind participants to stay in roles.

1. Observe non-verbal, as well as verbal, communications. Take notes on what you see and hear so you can make specific reference to what transpired, i.e., active listening examples.

1. At conclusion of the exercise distribute comparative factual summaries, if available, or ask participants to exchange confidential facts.

1. Share your observations with the participants but be sure to point out positive behaviors as well as negative.

1. Be prepared to report on what you observed and the outcome, if any, in class and succinctly state any outcome determinative or significant factors.

**Again, regardless of the role you will play in the exercise, you must come to class having carefully read the materials that have been handed out in advance of class and having prepared as directed.**

**Inter School Negotiation Practicum**: During the semester, we will participate in the Inter-School Negotiation Practicum which involves negotiation with a student from another school using email, phone, and video conferencing. This is organized by *South Texas College of Law and Prof. Debra Berman. We will discuss this in class.*

**Course Grading**: Your grade for the course will be based on the following:

A). Preparation, Attendance and Participation. (**15% of grade**.) You are expected to read the assigned material before class, prepare for and participate in class discussion and in class exercises and role-plays. Because this is a participatory class with assigned roleplays, your classmates and I depend on your attendance each class. If you must miss a class or be late, please communicate to me and to your teammates your likely absence or tardiness before class. You must also let me know the reason. If you are prepared and participate in good faith during the class, you will receive full credit for this grading component for the week. If you have an unexcused absence or are unprepared, you will receive a grade of D for the week. As is stated above, **beginning with week 5**, you will also be expected to prepare Preparation Worksheets for each negotiation. While ungraded, you will be required to submit your worksheets on Canvas before your negotiation. These will be due before class begins. I will be observing your negotiations randomly. If it appears to me that you are unprepared, I will consider that in you participation grade. Given that we remain in the midst of a pandemic, I encourage you to stay home if you are not well.

B). The remaining **85%** of your grade will be based on two quizzes and an exam weighted as follows. Both quizzes and the exam will be taken outside of class and scheduled as follows. (For students requiring any sort of accommodation, please reach out directly to Student Affairs). Both quizzes and exams will be in short answer format and will be open book.:

a. The first quiz of one hour in length will test your knowledge of Getting to Yes. It will be given on Canvas and will be open book. This quiz will be available on Canvas from February 4-6. This quiz will count for **20%** of your final grade.

b. The second quiz will be a reflection of your in-class negotiation of Discount Marketplace and Hawkins Development. You will be asked to respond to prompts. This quiz will be available from February 25-27. This quiz will count for **25%** of your grade.

c. Final Examination. There will be a four hour take home open book exam. The final exam will be similar to the second quiz except instead of your being tested on a negotiation you do in class, you will be asked to watch a video of two lawyers negotiating, and then to analyze the negotiation, and respond to prompts. The final exam will be available from May 6 through the final day of exams, May 12. Once you open the exam, you will have four hours to complete it. The final exam will count for **40%** of your grade.

For questions about delays in submitting assignments, please refer to the law school’s policy, available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

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

Information on current UF grading policies for assigning grade points may be found at https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx.

**UF Student Honor Code**: 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.

**Accommodations:** Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**Preferred Name and Pronouns**

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. I would like to acknowledge your preferred name, and pronouns that reflect your identity. Please let me know how you would like to be addressed in class if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

When class is on Zoom- you may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison." To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records

**Discourse, Inclusion, and the Classroom Ethos**

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

* commit to self-examination of our values and assumptions
* speak honestly, thoughtfully, and respectfully
* listen carefully and respectfully
* reserve the right to change our mind and allow for others to do the same
* allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution.

**Class Schedule:** We will meet once each week. Monday’s class will be from 2:15 until 5:15. Class will be in-person- although there will be some classes held on Zoom. You will be given notice in advance of classes that will be conducted on Zoom. When this is the case, you will find the link posted to Canvas.

**Office Hours:** My regular Office Hours are Mondays 11:30-12:30 for in-person Office Hours and Tuesdays from 8:30 to 9:30 for Zoom meetings. Additionally, I am always available for meetings by appointment.

Office Hours Zoom Link:

https://us02web.zoom.us/j/83610580394?pwd=TElGWDg5TWtISGNwVTZsSWZYYXRL UT09

**Online Course Evaluations**: Students are expected to provide feedback on the quality of the 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 be given specific times when they are open. Summary results of these assessments are available to students at https://evaluations.ufl.edu/results/.

**Canvas:** Please check Canvas regularly for new postings. Make certain that your Canvas Account is set to receive emails**, and that you have not disabled the email forwarding feature.** Canvas is my primary method of communication, and you put yourself at a serious disadvantage if you cannot access the emails and announcements I post on Canvas.You will also access the role play instructions and private facts as well as the Pairs and Teams on Canvas. I also regularly post supplemental materials to the Modules. If you have difficulty accessing or working with Canvas, please reach out to the Help Desk.

**Attendance and Preparation**: Your attendance and preparation are critical to your success in this class. Most weeks, you will be paired with another student or group of students. If you are absent from class, you will disrupt the exercise for you and for your partners and classmates. Further, your attendance is essential to your ability to apply the theory discussed to the exercises. For this reason, regular and punctual attendance at classes is mandatory. I do take attendance.

**If you do not adequately prepare, you will lose credit**! You are expected to spend 6 hours each week on this class. Much of that time should be spent preparing for the role plays.

Classes will begin promptly at the scheduled time. Students arriving late will receive partial credit for attendance for that day. Anything in excess of 15% unexcused absences may render a student ineligible to receive credit for the course. Excused absences are consistent with University policies (https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx) and may require appropriate documentation. Likewise, preparation is essential to your learning and improving your skills. As the semester progresses, these role plays increase in complexity and become extremely fact intensive. Failure to thoroughly prepare will be evident and will impact your participation grade. Further, if you come to class unprepared, not only will you lose out, but you will disadvantage your classmate(s). Spend the requisite time with these fact patterns, please.

**Assignments and Important Dates and Events: Please Note that the exercises may need to change based on our class. If the exercises change, updates will be emailed and posted on Canvas.**

Week One (1/24)

*Read: Getting to Yes; Introduction, The Problem, and The Method*

**Introduction of Course and Basic Factors Affecting Negotiation**

# The Rug

**Cosmetics Company/Drug Company**

Week Two (1/31) (Registration Opens for the Inter-School Negotiation Practicum)

*Read: Getting to Yes: Finish book*

**Basic Factors Affecting Negotiation, cont’d.**

# The Law Library

Week Three (2/7) (First Quiz- on Getting to Yes-Your quiz will be available on Canvas beginning this Friday- until Sunday at 11:59 pm. Once you open the quiz you will have one hour

*The Negotiation Process* **Preparation**

Prepare for Parker Gibson including—Complete the Inventory/Satisfaction Questionnaire (**Part 1** **ONLY**)

**Parker-Gibson**

Week Four (2/14)

*Complete the Conflict Assessment Tool (Available on Canvas)*

**Style**

**Oil Pricing Exercise (No preparation required for this in-class exercise)**

Week Five (2/21)

*Read: Negotiation Genius: Introduction and Part I, The Negotiator’s Toolkit*

*Use the Preparation Worksheet (located in “Assignments” and/or “Modules” on Canvas) to help you begin your preparation for next week’s negotiation of* ***Super Slipster)***

**The Negotiation Process**

# Super Slipster

***Beginning with this week and continuing for the remainder of the semester, you will be required to prepare and submit Preparation Worksheets on Canvas for all your negotiations. They will be due before class begins. Do not submit them after 2:15.***

Week Six (2/28) (Begin negotiating the Inter-school Negotiation Practicum)

Second Quiz- Reflection on an in-class Negotiation -Your Quiz will be available on Canvas beginning this Friday- until Sunday at 11:59 pm Once you open the quiz you will have one hour.

*Read Email Negotiation: Reading- by Noam Ebner which has been posted to a Module on Canvas*

Communication including different modes of communication.

# Discount Marketplace and Hawkins Development

**SPRING BREAK NO CLASS 3/7**

Week Seven: (3/14)

*Review: Model Rules of Professional Responsibility: 1.6, 4.1, 3.3, 8.4*

# The Don’s (Outside of class- meet in groups of client/lawyer as part of your preparation for this week’s class)

# The Don’s (Negotiate)

Week Eight: (3/21)

*Read: Mediation Reading posted on Canvas*

Mediation Assisted Negotiation (Guest Mediator)

**Camilia Pictures**

Week Nine: (3/28)

*Read: Negotiation Genius Part II, The Psychology of Negotiation*

*Optional Read: Neuroscience and Settlement, Richard Birke which has been posted to Canvas* Evaluation and Decision Making: Psychological Factors Impacting Negotiation

**Bullard Houses**

Week Ten: (4/4)

*Read: Finish Negotiation Genius*

Different Modes of Communication—Debrief of Inter School Negotiation Exercise

**MAPO**

Week Eleven: (4/11)

Movie Class: *A Civil Action (As stated in the syllabus—you must have watched this movie* ***before*** *this Movie Class)*

**MAPO**

Week Twelve: (4/18)

Review

Week Thirteen: (4/25)

**Orlen v. Bryson**