

# Negotiation - Law 303-001

Fall, 2021

## Syllabus

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### Course Summary

This interactive course introduces students to the theory and practice of negotiations. Topics include strategy, ethics, communication, collaborative lawyering, deal-making, mediation and settlement of disputes. Students will be introduced to negotiation theory and develop negotiating skills by participating in simulations, analyzing bargaining behavior, discussing negotiation concepts and receiving critique. A particular **focus will be the interactive process of negotiations.**

This course will focus on negotiation as it relates to legal practice. Theories that will enable you as lawyers to engage in dealing with conflict and finding solutions will be emphasized. Negotiation simulations will focus on typical negotiation problems faced by lawyers, such as the settlement of lawsuits and the negotiation of various business transactions. While this is not meant to be a class on mediation, negotiation is perceived as a pre-requisite to mediation, and some of our exercises will be in the nature of mediation. We will emphasize an understanding model of negotiation (as evolved by Himmelstein and Friedman), and the course and recommended readings will introduce foundational concepts and assist you to conceptualize the process to deal with conflict and negotiation in a clinical and healthy way. Negotiation involves a psychological component, and Dr. Garver's background is vital to understanding of the psychological element in negotiation.

Through readings, class discussions, audio-visual presentations, role plays, interactive exercises and written assignments, you will learn: (1) theories, models and concepts of negotiation; (2) problem-solving skills; and (3) reflective practice.

### Course Schedule

The course will be offered over two weekends, September 24-26 and November 19-21, meeting each weekend on Fridays (1:00 PM - 6:00 PM), Saturdays (8:00 AM - 6:00 PM), and Sundays (8:00 AM - 3:00 PM). There will be various breaks and time for lunch each day other than Fridays.

### Course Expectations

Students will be assessed by their performance on varied activities and assignments completed during and outside of class. Grades are based on class participation and students' command of negotiation principles and skills, as demonstrated in simulations and in writing assignments.

Every student will be given an opportunity to meet with the professors after the first session and before the second session to discuss their performance and progress.

## **TEXTUAL ANALYSIS (35% of FINAL GRADE)**

Students will have **one required reading**, *Getting to Yes: The Strategy of Successful Negotiation*. This book **must be read before the first class** and will be discussed at both the September and November weekends.

Each student will be **assigned two additional books** to read from the list provided below and **will be required to prepare a written and oral report of each**. Assignments for the first book will be made in advance of the first class, and students will give presentations regarding the first books and the theories espoused therein during the September weekend. The second book will be assigned at the end of the first weekend, and students will present on these readings during the November weekend.

Students' comprehension and critical analysis of the readings will be assessed according to their performance on the following tasks:

- Class Discussion
- Written Reports on Two Additional Assigned Books: Each 2-3 page book report should include: a concise overview of the book, description of the book's central themes and concept, a critique of the book, and discussion of the book's application to negotiation theory and process. **Book reports must be prepared in writing and submitted before the beginning of class on the due date by email and in hard copy at the beginning of class.**
- Team Presentations: Students will present for about 30 minutes to the whole class on their assigned book in teams of four with the other students who read the same book. Presentations must demonstrate students' understanding of the ideas expressed in the readings and an ability to explain to the rest of the class about the book's concepts. In addition, the presentations must facilitate a discussion of each book with the rest of the class that addresses the book's major themes and its application to the negotiation paradigm and skill development.

## **CLASS PARTICIPATION (50% of FINAL GRADE)**

Students will be graded on their participation in the class exercises and their implementation of the negotiation concepts learned. We will evaluate each student's demonstration of the skills taught and their evolution through the course. Students are encouraged to take risks and explore ideas in a safe setting. We will balance a student's demonstration of negotiation skills with their attempt to experiment with different ideas and theories. We will be looking for students to improve in their negotiation skills over the time of the course. We will also be looking for evidence of the level of preparation each student brings to the negotiation exercises and its impact on their negotiation skills. The process will be emphasized over the result.

Students will be assessed according to the performance in the following areas:

- Engagement in Class Discussion and Activities: This class is interactive and successful learning is dependent upon preparation and class participation. This is not primarily a "lecture" course. The amount of time and preparation each student puts into this class will affect the learning outcomes for all of your colleagues. The class size is limited to 16 students so that all students can be actively engaged in the learning process. Students are

expected to contribute and to listen attentively to others in class. You will generally work in groups of two or four students.

- **Attendance: Students are required to attend all classes and to be punctual.** If a student knows that they cannot attend a class or will be late for class or must leave class early, **it is the responsibility of that student to contact the professors beforehand by phone or email.** Only a true emergency will be excused, and **full class participation is necessary for credit. Note: Students must attend the first class in order to be enrolled. Students must attend every session in order to receive full credit for the course. If students do not attend each class it should be presumed they will not receive credit for the course.** Because you will be working in groups full attendance is necessary as you will have an obligation to fellow students.
- **Preparation of Exercises:** Students will be assessed on how well they prepare for class exercises. Most of the preparation for each class exercise will be in class. An exception will be the divorce exercise where some materials and preparation will be necessary outside class. We will be looking for evidence that students understand and can apply the negotiation skills and concepts taught when applicable, including some or all of the seven steps: identifying positions, identifying interests, developing problem statements, brainstorming, generating options, using objective criteria, and identifying BATNA and ZOPA.
- **Process and Communication in Role Playing:** During role-playing exercises, we will look for evidence that students understand and can apply when applicable the negotiation skills and concepts taught, including: active listening, establishing ground rules, reflecting and reframing the issues or concerns (looping), and seeking clarification of positions and interest on both sides.
- **Establishing an Agreement and/or Closing the Negotiation:** We will look for evidence that students understand and can apply concepts and skills related to establishing an agreement or concluding a negotiation, including: generating a tentative agreement, evaluating outcome(s) for agreement among members of the group and the reality of implementation, and clarifying next steps.

### **LEGAL MEMORADUM (15% of FINAL GRADE)**

Students will be asked to write legal memoranda for certain exercises. While some memos will be simple outlines, one memorandum will be a comprehensive document to prepare for mediation and it will be graded.

#### **Required Reading**

The following book is **required reading for every student in advance of the first class:**

**Fisher, Roger, and William Ury. *Getting to Yes: the Strategy of Successful Negotiation*. Houghton Mifflin, 1981.**

Required readings and materials that complement the class exercises will be distributed during class. The reading for most of the exercises will be done in class except for the major negotiation project the second weekend. For the exercises, there will be confidential information supplied to each student, and each student is expected to properly prepare the material and keep the appropriate information confidential.

In addition, each student will be **assigned two additional books** (one to be ready by the first day of class and the other by the first day of the November class) to read from the list below and **will be required to prepare a written and oral report of each**. Assignments of Book 1 will be when we have a class roster and Book 2 will be assigned at the end of the first weekend.

Book List:

- Friedman, Gary J., and Jack Himmelstein. *Challenging Conflict: Mediation through Understanding*. American Bar Association, 2008.
- Malhotra, Deepak. *Negotiating the Impossible: How to Break Deadlocks and Resolve Ugly Conflicts (without Money or Muscle)*. Berrett-Koehler Publishers, 2016.
- Mnookin, Robert H., et al. *Beyond Winning: Negotiating to Create Value in Deals and Disputes*. Belknap, 2000.
- Mnookin, Robert H. *Bargaining with the Devil When to Negotiate, When to Fight*. Simon & Schuster, 2010.
- Shapiro, Daniel. *Negotiating the Nonnegotiable How to Resolve Your Most Emotionally Charged Conflicts*. Penguin Books, 2016.
- Stone, Douglas. *Difficult Conversations: How to Discuss What Matters Most*. Viking, 1999.
- Susskind, Lawrence. *Good for You, Great for Me: Finding the Trading Zone and Winning at Win-Win Negotiation*. Public Affairs, 2014.
- Voss, Chris, *Never Split the Difference*. Harper Collins 2016.

**\*Any edition of the foregoing books is acceptable. Most are available in paperback and all are available on Amazon. The school bookstore may have "Getting to Yes."**

The following books are recommended readings but **not required** for this course:

- Bazerman, Max H. *The Power of Noticing: What the Best Leaders See*. Simon & Schuster Paperbacks, 2014.
- Bowling, Daniel, and David A. Hoffman. *Bringing Peace into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution*. Jossey-Bass, 2003.
- Breslin, J. William., and Jeffery Z. Rubin. *Negotiation Theory and Practice*. Program on Negotiation at Harvard Law School, 1991.
- Caspersen, Dana. *Changing the Conversation: the 17 Principles of Conflict Resolution*. Profile Books, 2015.
- Fisher, Roger, and Daniel Shapiro. *Beyond Reason: Using Emotions as You Negotiate*. Random House Business, 2006.
- Friedman, Gary J. *Inside out: How Conflict Professionals Can Use Self-Reflection to Help Their Clients*. American Bar Association, Section of Dispute Resolution, 2014.
- Lax, David A., and James K. Sebenius. *3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals*. Harvard Business School Press, 2008.
- Lewis, Michael. *The Undoing Project: a Friendship That Changed the World*. Allen Lane, an Imprint of Penguin Books, 2017.
- Salacuse, Jeswald W. *Negotiating Life: Secrets for Everyday Diplomacy and Deal Making*. Palgrave Macmillan, 2013.

- Subramanian, Guhan. *Negotiauctions New Dealmaking Strategies for a Competitive Marketplace*. W.W. Norton & Co., 2010.
- Susskind, Lawrence, and Jeffrey L. Cruikshank. *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. Langara College, 2005.
- Susskind, Lawrence, and Jeffrey L. Cruikshank. *Breaking Robert's Rules: the New Way to Run Your Meeting, Build Consensus, and Get Results*. Oxford University Press, 2006.
- Ury, William. *Getting to Yes with Yourself: How to Get What You Truly Want*. HarperOne, An Imprint of HarperCollinsPublishers, 2016.
- Wheeler, Michael. *The Art of Negotiation: How to Improvise Agreement in a Chaotic World*. Simon & Schuster, 2013.

### **Daily Agenda**

We will follow the syllabus and agenda as closely as possible but will make adjustments as necessary to optimize the class for all of the students and for the presentation of material. Additionally, we will make adjustments for online teaching and participation, if necessary.

All class exercises will be in small groups and the professors will interact with all of the groups. In the agenda, the names of exercises have been withheld to avoid students preparing in advance.

#### **Friday, September 24, 2021**

- 1:00 Introductions and Overview of Class
- 2:00 Negotiation Theory and “Getting to Yes”
- 2:45 Break
- 3:00 Exercise 1
- 3:15 Debrief and Takeaways
- 3:30 Break
- 3:45 Book Report
- 4:45 Exercise 2
- 5:30 Debrief and Takeaways
- 6:00 Adjourn

#### **Saturday, September 25, 2021**

- 8:00 Negotiation Paradigm
- 8:20 Exercise 3
- 9:00 Book Reports
- 10:00 Break
- 10:15 Exercise 4
- 11:30 Break (**do not** discuss roles)
- 11:45 Debrief and Takeaways
- 12:30 Lunch Break
- 1:30 Exercise 5
- 2:00 Break into attorney interview groups
- 3:00 Break (**do not** discuss roles)
- 3:15 Negotiate

- 4:15 Debrief and Takeaways
- 4:30 Video of Interviews, Lawyers and Clients
- 5:30 Book Report
- 6:00 Adjourn

### **Sunday, September 26, 2021**

- 8:00 Exercise 6
- 8:30 Debrief and Takeaways
- 9:00 Exercise 7
- 10:00 Break
- 11:00 Debrief and Takeaways
- 12:00 Lunch Break
- 1:00 Hackerstar Video
- 2:00 Book Reports
- 2:45 Instructions and Assignments for November Class
- 3:00 Adjourn

### **Friday, November 19, 2021**

- 1:00 Negotiation Theory for Lawyers and in Everyday Life
- 1:30 Identity and Impact on Negotiation
- 2:00 Women's Issues in Negotiation
- 3:00 Break
- 3:15 Exercise 8
- 4:30 Debrief and Takeaways
- 5:00 Book Report
- 5:30 Discuss and "distribute" Divorce Law for Study
- 6:00 Adjourn

### **Saturday, November 20, 2021**

- 8:00 Divorce case exercise
- 10:00 Break
- 10:15 Lawyer Interviews and Memo preparation
- 12:30 Lunch Break (**do not** discuss with others your role)
- 1:30 *Pendente Lite* Dispute
- 2:30 Negotiating Agreement
- 5:30 Adjourn for Course evaluations

### **Sunday, November 21, 2021**

- 8:00 Continue Divorce Negotiation & Prepare Agreement if Applicable
- 10:00 Book Report
- 10:30 Break
- 11:00 Debrief and Takeaways (submit agreements-make sure names of all four students are on agreement)
- 12:30 Lunch Break
- 1:30 Book Report
- 2:00 Book Report

2:30 World Trade Center Movie

2:45 Reflect on Course, Application of Negotiation, & Further Resources

3:00 Adjourn

**NOTE:**

It is intended that this class will be live on campus. In the event that the pandemic becomes worse, we are fully prepared to convert the class to an online model and surprisingly, though it requires some adjustments, the course works well online. Therefore, in the event it becomes necessary, we can pivot to online rather easily and the students will not miss any of the course. In that event, students will need to have internet available and the ability to receive and send emails.