

UNIVERSITY OF PENNSYLVANIA
THE WHARTON SCHOOL
DEPARTMENT OF LEGAL STUDIES

PROFESSOR EDWARD J. BERGMAN

NEGOTIATION AND DISPUTE RESOLUTION
LGST 206 SYLLABUS
FALL 2006

Classes: Wednesdays 3:00 p.m. - 6:00 p.m.
Room: 291-408 JMHH G86
Office: 619 JMHH
Department of Legal Studies, Huntsman Hall
Phone: (215) 898-1833 (Wharton); (609) 921-1502 (Princeton law office)
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Office Hours: Wednesdays, 1:30 p.m.- 3:00 p.m.
WebCafe: Go to JMHH F35 to set up an account.

Assigned Reading: Fisher, *et al.*, Getting to Yes, revised ed., Penguin (1991); Shell, Bargaining for Advantage, 2d ed., Penguin (2006). Bulk Pack to be purchased at Wharton Reprographics. NOTE: The Bulk Pack contains many of the substantive readings for the course, so you must obtain it.

COURSE FORMAT

Although this class will include lectures, videos and class discussions, a series of simulated negotiation and mediation exercises is central to the course. At times, students will meet outside the classroom between class sessions to conduct some negotiations. Other exercises will require students to meet in teams between classes in preparation for negotiations that will take place in class. Many simulations are executed during class hours.

ATTENDANCE POLICY

A. Students are expected to attend all classes and to participate in all negotiation/mediation exercises and class discussions. This intensive participation is critical to the dynamic of the course. Each student's ability to benefit from this course literally depends on every classmate's active contribution and commitment. Moreover, in-class exercises will not work if key parties are absent. Therefore, **students should consider whether they can commit to this course**. To protect the common interests of participants, MISSING MORE THAN TWO THREE HOUR CLASSES DURING THE SEMESTER WILL RESULT IN YOUR GRADE BEING LOWERED ONE FULL LEVEL. **IN ANY CASE, IF YOU ARE GOING TO MISS A CLASS IT IS IMPERATIVE THAT YOU ADVISE ME A FEW DAYS IN ADVANCE,**

IF POSSIBLE, TO EASE THE DISRUPTION CAUSED BY YOUR ABSENCE. PLEASE LEAVE WORD AT MY PRINCETON OFFICE. In addition, if you must miss a class over which you have control, choose one which is not an in-class negotiation or mediation. If you miss class, you must obtain and complete any assignments or negotiations distributed in that class. For obvious reasons it is essential to be on time.

B. Each student is required to attend out-of-class lectures at which prominent negotiation practitioners will share their experiences and be available for questions. These lectures are likely to be scheduled from 4:30 p.m. - 6:00 p.m on dates to be announced. As the syllabus indicates, one class has been cancelled to offset the additional class time represented by those lectures. **October 11, 2006 has been selected for the date of cancellation. There also will be no class on November 22, 2006, the day before Thanksgiving.** Lecturers, topics, dates and times for the practitioner lectures will be announced in class. If an **unavoidable** conflict prevents your attending the lecture personally, you must submit a written explanation of your conflict to me and view the video of the lecture, which will be available in the AV Library in SH/DH.

C. Students are encouraged to meet with me at least once, during office hours, to discuss their negotiation progress. You may find it beneficial to meet with me and a negotiation counterpart to discuss a negotiation that was particularly problematic for you and/or to confer with me alone regarding any course-related issues.

GRADING AND COURSE REQUIREMENTS

1. Class Participation (20% of your grade)

While I do not grade students on the results of individual negotiations, the overall quality of your participation in the negotiation exercises forms part of the Class Participation grade. Students are expected to participate in ALL negotiation exercises and class discussions. Assigned readings frequently form the basis for class discussions. Your familiarity with and understanding of these materials form a part of the Class Participation grade. Participation includes FULL preparation for exercises and submission of a typed, one page summary of the most important aspects of each negotiation, for you personally, at the class following debriefing of the negotiation. In addition, you must submit a one-page description of the most important aspects, for you, of each out-of-class lecture. It is your responsibility to obtain materials handed out in class and to hand in required assignments on time.

2. Mid-Term Examination (30% of your grade)

At the end of Class 5 a take-home Mid-Term Examination will be distributed for submission at the beginning of Class 6. Detailed instructions will be incorporated in the examination.

3. A Comparison of Your Initial Objectives in Taking this Course and Your Actual Achievements (or lack thereof). (20% of your grade)

At the beginning of Class 2 you will submit a brief description of your expectations and aspirations for this course (in 350 words or less). At the beginning of Class 12 you will submit a paper comparing your initial objectives with your actual accomplishments (or lack thereof) with specific references to what aspects of the course, both in terms of substance and the use of particular teaching materials, (e.g., negotiations, class discussions, interactions with classmates, readings, film clips, instructional videos, out of class lectures) proved instrumental in enhancing your negotiation skills and expertise. Describe the ways in which things you have learned about yourself as a person and a negotiator (strengths and weaknesses) have changed or influenced your approaches to negotiation in general and to particular negotiation situations, (e.g. characteristics of the other parties, relationships, the stakes, the subject matter or the potential for mutual gain or lack of thereof). This paper is not to exceed 1,250 words, inclusive of your initial submission.

4. Final Project (30% of your grade)

Teams of two, three or four students (in rare cases permission will be granted for five person teams) will write research papers on a complex, high-profile negotiation in progress or completed, or on a theoretical topic in negotiation. Such papers will be no more than 2,500 words long for a single preparer (exclusive of bibliography and/or exhibits). Each addition of a team member will increase the permissible maximum length by no more than 500 words. Alternatively, your team may devise a multi-party negotiation game with role sheets and teacher's notes (incorporating specific applications of the negotiation literature to those negotiation concepts the game is designed to illuminate), and a section detailing the results of several repeated runnings of the game. Negotiation game projects have no specific word limitation but authors are required to exercise restraint, consistent with the knowledge that a game is intended to be used and must be practical and accessible.

NOTE: READINGS, JOURNAL & NEG. ASSIGNMENTS LISTED UNDER A CLASS NUMBER AND DATE ARE ASSIGNMENTS DUE FOR THE NEXT CLASS UNLESS SPECIFIED TO THE CONTRARY.

CLASS 1 (September 6, 2006)

COURSE OVERVIEW; INTRODUCTION TO DISTRIBUTIVE BARGAINING

In Class: Overview of course content, requirements, grading and calendar; introduction to negotiation; video clip from “Take the Money and Run,” Woody Allen (1969); video clip from “Defending Your Life,” Albert Brooks (1991); hand out and discuss Lardner, You Know Me Al: A Busher’s Letters; video clip from “Wall Street,” Oliver Stone (1987); hand out and negotiate “The Bentley Convertible;” debrief.

Readings Bergman, “Why Do Whartonites Love Negotiation Studies?...” (Bulk Pack);
For Sept. 13: Lewicki, “Strategy & Tactics of Distributive Bargaining” (Bulk Pack); Korobkin & Guthrie, “Opening Offers and Out-of-Court Settlement” (Bulk Pack); Lax & Sebenius, “Agents & Ratification” (Bulk Pack); Bazerman & Neale, Chapter 15, “Negotiating Through Third Parties” (Bulk Pack); Shell, Introduction, “The Anxious Negotiator;” Chapter 8, “Exchanging Information;” and Chapter 9, “Opening & Making Concessions;” “Should you use an Agent.” pp. 131-132.

Negotiation

Assignment: N/A

Summaries: "The Bentley Convertible."

CLASS 2 (September 13, 2006)

BASIC DISTRIBUTIVE BARGAINING

In Class: Submit a brief description (350 words or less) of your expectations and aspirations for this course. (See page 3 above) Hand out and negotiate “Appleton v. Baker;” debrief; discuss Distributive Bargaining; hand out and negotiate “The Book Contract;” debrief; hand out “Knight/Excalibur” for negotiation outside of class.

Readings Lewicki, “Ethics in Negotiation” (Bulk Pack). Shell, Chapter 11, “Bargaining
For Sept. 20: With The Devil Without Losing Your Soul: Ethics in Negotiation;” Bazerman, “Framing Negotiations” (Bulk Pack); Shell, Ch. 3, “The Third Foundation: Authoritative Standards and Norms.”

Negotiation

Assignment: Negotiate “Knight/Excalibur” outside class; debrief in groups. Prepare results sheets for submission at outset of Class 3.

Summaries: “Appleton v. Baker” and “The Book Contract.”

CLASS 3 (September 20, 2006)

DISTRIBUTIVE BARGAINING: PERCEPTION; ETHICAL AND LEGAL ISSUES CONCERNING TRUTHFULNESS IN NEGOTIATIONS; THE IMPORTANCE OF PREPARATION

In Class: Video excerpt from “Pather Panchali,” Satyajit Ray (India 1955); video excerpt from “Be Cool,” Gary Gray (2005); *discussion of the role of perception* in negotiation; debrief “Knight/Excalibur”; *discuss lying in negotiations* from ethical, legal and practical standpoints; video excerpt from “The Middleman,” Satyajit Ray (India 1975); video excerpt from “Other Peoples’ Money”; video excerpt from “The Devil’s Advocate,” Taylor Hackford (1997); *discussion of the role of preparation*; hand out “The Power Screen Problem” with Preparation Guide.

Readings Fisher, Ury & Patton, Getting to Yes, pp. 3-93; Lax & Sebenius, “The Negotiator’s Dilemma: Creating & Claiming Value” (Bulk Pack); Shell, Ch. 4, “Relationships” and Ch. 5, “The Fifth Foundation: The Other Party’s Interests;” Lewicki, “Strategy & Tactics of Integrative Negotiation” (Bulk Pack). Sheppard, “Negotiating in Long-Term Mutually Interdependent Relationships Among Relative Equals” (Bulk Pack).

Negotiation

Assignment: Prepare “The Power Screen Problem” for in-class negotiation in pairs (lawyer and client), draft preparation memo.

Summaries: “Knight/Excalibur”.

CLASS 4 (September 27, 2006)

INTRODUCTION TO INTEGRATIVE / PRINCIPLED NEGOTIATION; RELATIONSHIPS

In Class: Hand in “Power Screen” preparation memo; video of Hacker-Star confrontation; negotiate “The Power Screen Problem;” debrief and hand out Illustrative Preparation Memo; video excerpt from “The Thomas Crown Affair,” J. McTiernan (1999); *discussion of relationships*; hand out “Job Negotiation” for videotape negotiation outside class.

Readings for Oct. 4: Lewicki, “Strategy and Tactics of Integrative Negotiation” (Bulk Pack); Gilkey & Greenalgh, “The Role of Personality in Successful Negotiating” (Bulk Pack); Lax & Sebenius, “Interests: The Measure of Negotiation” (Bulk Pack); Shell, Ch. 1, “The First Foundation: Your Bargaining Style;” Appendix A: Bargaining Styles Assessment Tool; and Ch. 7, “Preparing Your Strategy;” The Thomas-Kilmann Conflict Mode Instrument (Bulk Pack).

Negotiation

Assignment: Go to Wharton Audio-Visual (JMHH30) to reserve a camcorder for a one-half hour videotaping of "Job Negotiation" before Class 6. Negotiate "Job Negotiation" on videotape. Tapes should not exceed ½ hour and must be clearly identified with your names, my name and the course number. You can either bring a blank VHS tape to the session or purchase a blank one from Wharton Audio-Visual for \$5.00. You are responsible for reserving the Group Study room on -line. This negotiation must be completed before Class 6. Your tapes are to be deposited at the front desk of the Lippincott Library.

Complete your Bargaining Styles Assessment Tool in Shell, Appendix A for Class 5.

Summaries: “The Power Screen Problem”

CLASS 5 (October 4, 2006)

PERSONALITY AND NEGOTIATION; INTEGRATIVE NEGOTIATION (CONT'D.)

In Class: **Take-home Mid-Term Examinations distributed;** Hand in your Bargaining Style Assessment Results and Grid; Video excerpt from Professor Gerald Williams' "Aggressive v. Cooperative Bargaining;" The Thomas-Kilmann Conflict Mode and the Shell Situational Matrix; *discussion of personality*; hand out "Sally Soprano" with illustrative examples; separate class for preparation by sides (Sally's reps and Lyric's reps).

Readings

For Oct. 18: White, "The Pros & Cons of Getting to Yes" (Bulk Pack); Lewicki, "Finding and Using Negotiation Leverage" (Bulk Pack); Shell, Ch. 2, "The Second Foundation: Your Goals & Expectations" and Ch. 6, "The Sixth Foundation: Leverage;" Lax & Sebenius, "Interests: The Measure of Negotiation" (Bulk Pack).

Negotiation

Assignment: Negotiate "Sally Soprano" outside class.

Summaries: N/A

NO CLASS OCTOBER 11, 2006

CLASS 6 (October 18, 2006)

INTERESTS & THE USE OF TRADEOFFS; POWER IN NEGOTIATION

In Class: **Hand in Mid-Term Examinations**; Debrief “Job Negotiation”; video excerpts from “Gandhi,” Richard Attenborough (1982); *discussion of power in negotiation*; hand out Trump & Lewinski articles; hand out “Harborco.” Debrief “Sally Soprano” (handout containing possible elements of negotiated settlement); *discussion of interests & tradeoffs*

Readings

For Oct. 25: Lewicki, "Multiparty Negotiations" (Bulk Pack); Gray, “Collaboration: The Constructive Management of Differences” (Bulk Pack).

Negotiation

Assignment: Prepare and evaluate positions in “Harborco” individually; discuss the game with individual members of your "Harborco" team; do not discuss the game with members of other “Harborco” teams; view your “Job Negotiation” video and two others.

Summaries: “Sally Soprano,” "Job Negotiation"

CLASS 7 (October 25, 2006)

MULTI-PARTY, MULTI-ISSUE NEGOTIATION / COLLABORATION

In Class: Negotiate "Harborco" in class; debrief in groups; post group results and calculate individual points; class debriefing; *discussion of collaboration*; hand out "Game Theory" essay and roles.

Readings Bergman, “Wrangling to the Rhythm” (Bulk Pack); Brandenburger &
For Nov. 1: Nalebuff, “Co-Opetition” (Bulk Pack); Andrews, “Regarding Customers as Business Collaborators” (Bulk Pack).

Negotiation

Assignment: Read “Game Theory” essay and do some INDEPENDENT RESEARCH to improve your understanding of the issues in preparation for negotiation; prepare and submit a negotiation memo for Class 8 outlining your interests, options, potential tradeoffs and resistance points.

Summaries: "Harborco"

CLASS 8 (November 1, 2006)

In Class: Submit “Game Theory” negotiation memo; negotiate "Game Theory" in class; draft and submit “white papers”; debrief with *discussion of “Co-Opetition;”* hand out “York v. Lancaster Insurance,” and “Jane Vignette.”

Readings

For Nov. 8: Davis, “Mary Parker Follett” (Bulk Pack); Menkel-Meadow, “Teaching About Gender and Negotiation: Sex, Truths and Videotape” (Bulk Pack); Kolb, “More than Just a Footnote” (Bulk Pack) (optional)., Sternlight & Stulberg, “Mediator Roles, Orientations and Styles,” (Bulk Pack)

Negotiation

Assignment: Prepare for in-class mediation of “York v. Lancaster Insurance,” read “Jane Vignette” in preparation for class discussion of the role of gender in negotiation.

Summaries: “Game Theory”

CLASS 9 (November 8, 2006)

FINAL PROJECT TOPICS AND TEAMS DUE

GENDER, RACE & STEREOTYPING IN NEGOTIATION

In Class: Mediate “York v. Lancaster Insurance,” in class; debrief; video excerpt from “Nothing in Common,” Garry Marshall (1986); hand out “Jane” vignette; discussion of gender, race and stereotyping led by a panel of class members.

Readings

For Nov. 15: Moore, “Variables that Influence Mediation Strategies & Activities” (Bulk Pack); Bergman and Bickerman, Court-Annexed Mediation: Perspectives on Selected State & Federal Programs, “Introduction” (Bulk Pack); Aaron, “Evaluation in Mediation” (Bulk Pack); Gibson “Mediator Attitudes toward Outcomes: A Philosophical View”. (Bulk Pack).

Negotiation

Assignment: Prepare “St. Francis Hospital and the Managed Care Model” for mediation I class.

Summaries: “York v. Lancaster Insurance”

CLASS 10 (November 15, 2006)

MEDIATION

In Class: View “Mediation in Action,” (CPR Institute for Dispute Resolution Video); discussion of the mediation process; mediate “St. Francis Hospital and the Managed Care Model;” debrief.

Readings

For Nov. 29: Gibbs, “The Kpelle Moot” (Bulk Pack); Yaffe, “So Sue Me! The Story of a Community Court” (Bulk Pack); Goldberg, *et al.*, “Saying You’re Sorry” (Bulk Pack); Salacuse, “Making Deals in Strange Places” (Bulk Pack); Faure & Sjostedt, “Culture & Negotiation: An Introduction” (Bulk Pack); Shell, pp. 18-20, “A World of Different Cultures.”

Negotiation

Assignment: N/A

Summaries: “St. Francis Hospital”

**NO CLASS NOVEMBER 22, 2006
DAY BEFORE THANKSGIVING**

CLASS 11 (November 29, 2006)

CULTURAL PERSPECTIVES

In Class: Video excerpts from “Qiu Ju,” Zhang Yimou (China 1980); “The Middleman,” Satyajit Ray (India 1975); *class discussion of culture and dispute resolution*; video excerpt from “Eddie,” Steve Rash (2004); the role of “apology” in negotiation; video excerpt from “Rising Sun”, Philip Kaufman (1993); *class discussion of cross-cultural dispute resolution* and the relevance of same in a Wharton classroom.

Optional Readings

for Dec. 6: Bergman, “Negotiating in the 21st Century” (Bulk Pack); Bergman, Starting at Yes: Negotiation in the 21st Century, “Introduction” (in progress) (Bulk Pack); Schwartz, “Epilogue: To My Newborn Son” (Bulk Pack); Bleeke and Ernst, “The Death of the Predator” (Bulk Pack).

Negotiation

Assignment: N/A

Summaries: “Culture and Negotiation and Cross-Cultural Negotiation”

CLASS 12 (December 6, 2006)

MANDELA & de KLERK; CLASS REPUTATION - A MICROCOSM

In Class: Video excerpt from “Mandela & deKlerk,” Joseph Sargent (1997); class discussion of the negotiated end of apartheid; students volunteer to discuss their perception of the class reputations they have developed and to elicit responses from classmates for comparison purposes. **Hand in paper comparing initial objectives in taking the course with your actual accomplishments (or lack thereof).**

**FINAL PAPERS DUE
DECEMBER 13, 2006 BY 5 P.M.**

