

UNIVERSITY OF PENNSYLVANIA  
THE WHARTON SCHOOL  
DEPARTMENT OF LEGAL STUDIES & BUSINESS ETHICS

PROFESSOR EDWARD J. BERGMAN

**NEGOTIATION AND DISPUTE RESOLUTION**  
**LGST 206 SYLLABUS**  
**FALL 2008**

**Classes:** Thursdays 3:00 p.m. - 6:00 p.m.  
**Room:** To be announced  
**Office:** 619 JMHH  
Department of Legal Studies & Business Ethics, Huntsman Hall  
**Phone:** (215) 898-1833 (Wharton); (609) 921-1502 (Princeton law office)  
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**Office Hours:** Thursdays 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 9, 2008 has been selected for the date of cancellation.** 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). (10% 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 11 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 (40% 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, SUMMARIES & NEGOTIATION ASSIGNMENTS LISTED UNDER A CLASS NUMBER AND DATE ARE ASSIGNMENTS DUE *FOR THE NEXT CLASS* UNLESS SPECIFIED TO THE CONTRARY.**

## **CLASS 1 (September 4, 2008)**

### **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. 11:** 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.

**Summaries:** “The Bentley Convertible”

## **CLASS 2 (September 11, 2008)**

### **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. 18:** 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 18, 2008)**

### **DISTRIBUTIVE BARGAINING: PERCEPTION; ETHICAL AND LEGAL ISSUES**

#### **CONCERNING TRUTHFULNESS IN NEGOTIATIONS; THE IMPORTANCE OF PREPARATION**

**In Class:** Video excerpt from “Be Cool,” Gary Gray (2005); *discussion of the role of perception* in negotiation; debrief “Knight/Excalibur”; *discussion 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 25, 2008)**

### **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. 2:** 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;" 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.

**Summaries:** "The Power Screen Problem"

## **CLASS 5 (October 2, 2008)**

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

**In Class:** **Take-home Mid-Term Examinations distributed;** 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. 23:** 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.

**NO CLASS OCTOBER 9, 2008 – Yom Kippur**

## CLASS 6 (October 16, 2008)

### RATIONALITY AND DECISION-MAKING IN NEGOTIATION

**In Class:** Beyond Personality – Human Predilections; various in-class exercises; discussion of the sources and prevalence of irrationality; contexts in which irrationality predictably arises; combating irrationality and using it to advantage in negotiation.

**Readings:** From Predictably Irrational by Dan Ariely (published by HarperCollins, New York) for those interested in the subject and who may wish to design their final projects within this topic area.

## CLASS 7 (October 23, 2008)

### INTERESTS & THE USE OF TRADEOFFS; POWER IN NEGOTIATION

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

#### **Readings**

**For Oct. 30:** Lewicki, Multiparty Negotiations (Bulk Pack); Brandenburger & Nalebuff, “Co-Opetition” (Bulk Pack)

#### **Negotiation**

**Assignment:** Prepare and evaluate positions in “Aerospace Investment” individually and submit a negotiation memo for Class 7 outlining your interests, options, potential tradeoffs and resistance points (generally requires 1-2 hours); discuss the game with individual members of your “Aerospace” team; do not discuss the game with members of other “Aerospace” teams; view your “Job Negotiation” video and two others.

**Summaries:** “Sally Soprano” and “Job Negotiation”

## **CLASS 8 (October 30, 2008)**

### **MULTI-PARTY, MULTI-ISSUE NEGOTIATION / COLLABORATION**

**In Class:** Negotiate “Aerospace Investment” in class; debrief in groups; class debriefing; *discussion of co-opetition*; hand out “Harborco” roles.

**Readings For Nov. 6:** Bergman, “Wrangling to the Rhythm” (Bulk Pack); Gray, “Collaboration: The Constructive Management of Differences” (Bulk Pack); Andrews, “Regarding Customers as Business Collaborators” (Bulk Pack).

#### **Negotiation**

**Assignment:** Read your “Harborco” role materials individually, discuss the issues with individual members of your negotiating group but not more than one person at a time. No discussions with members of other groups are permitted.

**Summaries:** “Aerospace Investment”

## **CLASS 9 (November 6, 2008)**

**In Class:** Negotiate “Harborco” in class; debrief with *discussion of collaboration*; hand out “Jane Vignette.”

#### **Readings**

**For Nov. 13:** 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:** Read “Jane Vignette” in preparation for class discussion of the role of gender in negotiation.

**Summaries:** “Harborco”



## **CLASS 10** (November 13, 2008)

### **FINAL PROJECT TOPICS AND TEAMS DUE**

#### **GENDER, RACE & STEREOTYPING IN NEGOTIATION**

**In Class:** View “Mediation in Action” video; discussion of mediation process, mediator roles and comparison of mediation with other dispute resolution mechanisms; video excerpt from “Nothing in Common,” Garry Marshall (1986); discussion of gender, race and stereotyping led by a panel of class members.

#### **Readings**

**For Nov. 20:** 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); (optional) Gibson “Mediator Attitudes toward Outcomes: A Philosophical View”. (Bulk Pack).

#### **Negotiation**

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

## **CLASS 11** (November 20, 2008)

### **MEDIATION**

**In Class:** Mediate “St. Francis Hospital and the Managed Care Model;” debrief.

#### **Readings**

**For Dec. 4:** 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).

#### **Negotiation**

**Assignment:** N/A

**Summaries:** “St. Francis Hospital”

# NO CLASS NOVEMBER 27, 2008 - THANKSGIVING

**CLASS 12** (December 4, 2008)

## CULTURAL PERSPECTIVES MANDELA & de KLERK

**In Class:** Video excerpts from “Qiu Ju,” Zhang Yimou (China 1980); *class discussion of culture and dispute resolution*; video excerpt from “Rising Sun”, Philip Kaufman (1993); *class discussion of cross-cultural dispute resolution and the relevance of same in a Wharton classroom*; video excerpt from “Mandela & deKlerk,” Joseph Sargent (1997) **Hand in paper comparing initial objectives in taking the course with your actual accomplishments (or lack thereof).**

**FINAL PAPERS DUE  
DECEMBER 11, 2008 BY 5 P.M.**