

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

PROFESSOR EDWARD J. BERGMAN, J.D.

NEGOTIATION AND DISPUTE RESOLUTION
LGST 206 SYLLABUS
FALL 2016

Class: 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.

Required Reading: Fisher, *et al.*, Getting to Yes, revised ed., Penguin (2011)
Shell, Bargaining for Advantage, 2d ed., Penguin (2006)

NOTE: The Bulk Pack contains many of the substantive readings for the course and may be viewed online thru Study.Net. The Bulk Pack also contains readings that are not specifically assigned in which case they are optional. A complete hard copy of the course readings may be purchased thru Study.Net and picked up at Wharton Reprographics when notified via e-mail. Contact Wharton Reprographics at 215-898-6174 if you have any questions.

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. 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 stored, if available, in the AV Library in SH/DH. If no video is available, you will be given an additional assignment in lieu of the lecture.

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 and one-half 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 and one-half 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. You will have two weeks to complete this take home examination as Fall Break falls between Classes 5 & 6. Budget your time accordingly as no extensions will be granted. An extension would be unfair to those who have planned with an awareness that extenuating circumstances do occur.

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, or on a theoretical topic in negotiation. Such papers should be approximately 2,500 words long for a single preparer (exclusive of bibliography and/or exhibits). Each addition of a team member will increase the permissible length by no more than 1,000 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 a number of 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 1, 2016)

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 (handout); video clip from "Wall Street," Oliver Stone (1987); hand out and negotiate "The Bentley Convertible;" debrief.

Readings For Sept. 8: Bergman, "Why Do Whartonites Love Negotiation Studies?..." (Bulk Pack); 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); 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 8, 2016)

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 with discussion of "agency;" hand-out "Knight/Excalibur" for negotiation outside of class.

Readings For Sept.15: Shell, Chapter 11, "Bargaining With The Devil Without Losing Your Soul: Ethics in Negotiation;" Shell, Ch. 3, "The Third Foundation: Authoritative Standards and Norms;" Malhotra & Bazerman, Negotiation Genius, Bantam Books (2007), Chapter 9 "Confronting Lies and Deception" pp. 196-218 (Bulk Pack); Bazerman, "Framing Negotiations" (Bulk Pack);

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 15, 2016)

THE ROLE OF PERCEPTION AND PREPARATION IN NEGOTIATION: CONCERNING TRUTHFULNESS IN NEGOTIATIONS

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

Readings For Sept. 22 Fisher, Ury & Patton, Getting to Yes, pp. 3-95; 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). *Optional:* Sheppard, “Negotiating in Long-Term Mutually Interdependent Relationships Among Relative Equals” (Bulk Pack).

Negotiation

Assignment: Prepare “Negotiated Development in Redstone” for in-class negotiation.

Summaries: “Knight/Excalibur”

CLASS 4 (September 22, 2016)

INTRODUCTION TO INTEGRATIVE / PRINCIPLED NEGOTIATION; RELATIONSHIPS

In Class: Negotiate “Redstone;” debrief with discussions of Getting to Yes and Integrative Bargaining; *discussion of relationships*; hand out “Job Negotiation” for videotape negotiation outside class.

Readings

For Sept 29: Shell, Ch. 1, “The First Foundation: Your Bargaining Style” and Ch. 7, “Preparing Your Strategy;” Gilkey & Greenalgh, “The Role of Personality in Successful Negotiating” (Bulk Pack); Roberts & Palmer, Ch. 5, “Negotiations” pp. 133-142 (Bulk Pack); The Thomas-Kilmann Conflict Mode Instrument (handout).

⌘ Negotiation Assignment:

Video record your Job Negotiation. Recordings should not exceed ½ hour and at the beginning of the recording, you must state your full names, the name of your professor and the course number. If you plan to use a group study room, you are responsible for reserving it online. The video recording should be completed before Class 5.

For instructions on recording your negotiation for online turn-in through Canvas, either directly by webcam or by uploading a separately-recorded video file, see the Canvas Student Guide: <http://guides.instructure.com/s/2204/m/4212/l/54356-how-do-i-add-media-to-my-assignment>

AFTER your video is uploaded to Canvas you must review your video recording with your partner and two other videos (can be viewed alone) and write a journal entry about what you observe about your own and others' styles.

Summaries: "Negotiated Development in Redstone"

CLASS 5 (September 29, 2016)

⌘ Job Negotiation Videos are due by today (see instructions under Class 4)

⌘ Mid-Term Examination Hand Out for completion prior to Class 6

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

In Class: Video excerpt from Professor Gerald Williams' "Aggressive v. Cooperative Bargaining;" The Thomas-Kilmann Conflict Mode and the Shell Situational Matrix; *discussion of the role of personality;*

Readings "Why We're Still Happy;" (Bulk Pack)
for Oct.1: "The Behavioral Revolution;"(Bulk Pack) "What Makes a Good Wine Taste Better? Higher Price;"(Bulk Pack) "Work Up a Sweat and Bargain Better;"(Bulk Pack) "Using Menu Psychology" (Bulk Pack)
Optional: 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.

Negotiation Assignment: N/A

FALL BREAK — NO CLASS ON OCTOBER 6, 2016

CLASS 6 (October 13, 2016)

⌘ Mid-Term Examination Due ⌘

“JOB NEGOTIATION” IRRATIONALITY AND DECISION-MAKING IN NEGOTIATION

In Class: Debrief “Job Negotiation”; 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; handout Sally Soprano for negotiation outside class; separate class for preparation by sides (Sally’s reps and Lyric’s reps)

Readings

For Oct. 20: Shell, Ch. 2, “The Second Foundation: Your Goals & Expectations” and Ch. 6, “The Sixth Foundation: Leverage;” Lewicki, “Finding and Using Negotiation Leverage” (Bulk Pack); Lax & Sebenius, “Interests: The Measure of Negotiation” (Bulk Pack); “Monica Lewinsky, Career Woman” (Bulk Pack); “Vera Trumps the Donald in the Fine Art of the Deal” (handout)

Negotiation

Assignment: View and compare your “Job Negotiation” video and two other videos on CANVAS; negotiate “Sally Soprano” outside class before Class 7.

Summaries: “Job Negotiation”

CLASS 7 (October 20, 2016)

INTERESTS & THE USE OF TRADEOFFS; POWER IN NEGOTIATION

In Class: Debrief “Sally Soprano”; handout sample agreements and perks; discussion of interests & tradeoffs; hand out “Game Theory”; video excerpts from “Gandhi,” Richard Attenborough (1982); discussion of power in negotiation;

Readings

For Oct. 27: Brandenburger & Nalebuff, “Co-Opetition” (Bulk Pack); Lewicki, “Multi-Party Negotiation” (Bulk Pack)

Negotiation

Assignment: Prepare and evaluate positions in “Game Theory” individually with independent research to support your positions beyond the materials distributed and submit a negotiation memo for Class 8 outlining your interests, options, potential tradeoffs and resistance points (generally requires 1-2 hours); discuss the game with players of the same role in other “Game Theory” groups.

Summaries: “Sally Soprano”

CLASS 8 (October 27, 2016)

CO-OPETITION/ MULTI-PARTY NEGOTIATION

In Class: Negotiate “Game Theory” in class; submit “white paper” results; debrief in groups; class debriefing; discussion of co-opetition; discussion of multi-party negotiation; hand out “Harborco” roles.

Readings 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: “Game Theory”

CLASS 9 (November 3, 2016)

COLLABORATION

In Class: Negotiate "Harborco" in class; debrief with discussion of collaboration

Readings

For Nov. 10: Davis, "Mary Parker Follett" (Bulk Pack); Menkel-Meadow, "Teaching About Gender and Negotiation: Sex, Truths and Videotape" (Bulk Pack); "Her Place at the Table" (Bulk Pack); "When it Comes to Salary Many Women Don't Push." (Bulk Pack)

Negotiation

Assignment: Read "Her Place at the Table" carefully in preparation for class discussion of the role of gender in negotiation.

Summaries: "Harborco"

CLASS 10 (November 10, 2016)

⌘ Final Project Topics and Teams Due ⌘

INTRODUCTION TO MEDIATION; GENDER, RACE & STEREOTYPING IN NEGOTIATION

In Class: View "Mediation Demonstration: Underlying Interests" video (2013); 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; hand out "St Francis Hospital" roles.

Readings

For Nov. 17 Moore, "Variables that Influence Mediation Strategies & Activities" (Bulk Pack); Bergman and Bickerman, Court-Annexed Mediation: Perspectives on Selected State & Federal Programs, "Introduction" (Bulk Pack);

Negotiation

Assignment: Prepare "St Francis Hospital" for negotiation in class.

CLASS 11 (November 17, 2016)

MEDIATION

In Class: Mediate and debrief "St Francis Hospital;" hand out "Storyville Pulp and Paper Mill;" debrief

Readings

For Dec 1: Aaron, "Evaluation in Mediation" (Bulk Pack); *Optional:* Gibson "Mediator Attitudes toward Outcomes: A Philosophical View". (Bulk Pack)

Negotiation

Assignment: Prepare "Storyville Pulp and Paper Mill" for mediation in class.

Summaries: "St Francis Hospital"

NO CLASS THANKSGIVING BREAK

CLASS 12 (December 1, 2016)

⌘ Hand in paper comparing initial objectives in taking the course with your actual accomplishments (or lack thereof).

MEDIATION

In Class: Mediate "Storyville Pulp and Paper Mill;" debrief.

Readings

For Dec 8: Robert J. Janosik, "Rethinking the Culture-Negotiation Link" (Bulk Pack); Thompson, The Mind and Heart of the Negotiator, 4th ed., Prentice Hall, Ch. 12, "Negotiating via Information Technology" (Bulk Pack).
Optional: Thompson, Ch. 10, "Cross-Cultural Negotiations" (Bulk Pack) for those interested in the subject and who may wish to design their final projects within this topic area.

Summaries: "Storyville Pulp and Paper Mill"

CLASS 13 (December 8, 2016)

CULTURAL PERSPECTIVES ON NEGOTIATION/ THE IMPACT OF INFORMATION TECHNOLOGY

In Class: Video excerpts from “Qui Ju,” Zhang Yimou (China 1980); video excerpt from “Rising Sun,” Philip Kaufman (1993); class discussion of cross-cultural dispute resolution and the relevance of same in Wharton classroom; Discussion of how technology has altered, and will continue to alter, negotiation behavior.

**⌘ FINAL PAPERS DUE ⌘
ON OR BEFORE DECEMBER 20, 2016 @ 3:00PM
PLEASE SUBMIT BY E-MAIL TO: ejb@gear3.net**