

SYLLABUS

Negotiations

Spring 2013 - Tuesdays - 10:00 a.m. - 12:40 p.m.
Professor Tamara Lange and Judge Elaine Rushing

Introduction

This seminar is designed to teach students to become better negotiators and to represent clients effectively in both transactional and dispute resolution settings. Discussions of negotiation theory will inform weekly negotiation practice exercises, and students will be encouraged to develop their own negotiating instincts and organizing principles. Class exercises will cover identifying and engaging the core conflict, creating and claiming value, multi-party dynamics, client counseling, difficult tactics, and listening skills.

The intensive nature of this class provides students with an opportunity to evaluate their own skills, to experiment with new skills and techniques, and to work closely with one another. Exercises will include negotiation of business, family law, environmental, probate, impact litigation, and multi-party disputes as well as business deals. The course will be team taught, with both professors attending each week.

Course Objectives

- Familiarize the student with various negotiation approaches and styles, including knowledge of competitive negotiation techniques and effective responses
- Understand and develop effective strategies for each stage of a negotiation
- Explore adversarial and collaborative bargaining
- Understand ethical responsibilities of the lawyer representative
- Learn techniques for concluding a negotiation successfully, including crafting durable and enforceable agreements
- Identify cross-cultural challenges that can arise in negotiations
- Enhance communication skills, emphasizing effective use of listening, persuasion and relationship-building
- Develop personal grounding techniques and understand how grounding increases efficacy in negotiations
- Strengthen creative ability to expand the range of options for resolving a dispute

Assignments

Note: First Homework Assignment Must Be Completed before the First Class

	Class Material	Homework Due
Class 1 1/8/13	<i>Introduction to Negotiation</i> Pair Introductions <i>Haggle</i> debrief The Dispute Resolution Spectrum (1) Recognizing negotiation as an option	Read: <i>Bargaining for Advantage</i> , pp. 3-39; <i>Getting to Yes</i> , Introduction and pp. 3-15 (Don't Bargain Over Positions); <i>Difficult Conversations</i> , Introduction

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	(2) BATNA/WATNA (3) Distributive vs. Integrative Bargaining <i>Short Exercise</i> Negotiation as a juggling act: gathering information, effective use of questions, listening, using silence, reflecting understanding, reframing, strategy. Prepare, Negotiate and Debrief <i>Exercise TBA</i>¹	and pp. 1-20. <i>Do Hagggle Exercise:</i> Conduct a real-life price negotiation involving the sale or purchase of goods or services (e.g., at a garage sale, a farmer's market, hiring someone on Craigslist, etc.). As in any real-life negotiation, no purchase or sale is required. Be prepared to discuss during the first class what happened in your negotiation and your thoughts about why it unfolded as it did.²
Class 2 1/15/13	<i>Separating Positions and Interests</i> Identifying and Articulating Interests Avoiding Taking Positions Negotiate and Debrief <i>Exercise TBA</i> Grounding Techniques Expressing Yourself Effectively Negotiate, Debrief and Renegotiate <i>Exercise TBA</i>	Read <i>Getting to Yes</i>, pp. 19-57 (Separate the People from the Problem; Focus on Interests, Not Positions) and 149-164 (10 Questions People Ask); <i>Difficult Conversations</i>, pp. 185-200 (Expression). Prepare for <i>in-class negotiation</i>. Please review preparation expectations below (under "Assessment").
Class 3 1/22/13	<i>Ongoing Relationships & the Prisoner's Dilemma</i> - Negotiate and Debrief <i>Exercise TBA</i> <i>Debrief Real-Life Negotiations Homework</i> - Invoking Standards and Norms	Read <i>Bargaining for Advantage</i>, pp. 40-174. Prepare for <i>in-class negotiation</i>.

¹ To minimize the likelihood that students will absorb and retain information about the exercises when peers are talking about their experiences in other negotiation classes, we will identify the exercises selected when materials are posted or provided in class.

² A "haggle" is a type of negotiation in which the buyer and seller of a good or service dispute the price to be paid and sometimes also the terms of the transaction.

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	• Leverage and Exchanging Information <i>Cognitive Bias Exercise</i> <i>Anchoring Exercises</i>	Write a one- or two-page analysis of a real-life negotiation you conducted this week with someone with whom you have an ongoing relationship, noting the use of standards and norms, leverage, and timing and quality of exchange of information. What significance did continuing relationship play in the negotiation?
Class 4 1/29/13	<i>Creating and Distributing Value</i> Creating Value Increases the Pie, But You Still Have to Negotiate the Size of Your Slice or Why A Good Negotiator Needs Both Sets of Skills Negotiate, Debrief, and Renegotiate <i>Exercise TBA</i> <i>Personal Injury Concession Exercise</i>	<i>Getting to Yes</i>, Ch. 4: Invent Options for Mutual Gain. Conduct homework negotiation with assigned partner. When finished, <i>take a few minutes to note feedback for yourselves and share in person:</i> (1) start with what you did that worked well; (2) identify obstacles that tripped you up; (3) if you see something you'd like to try differently, try that piece again. Prepare for <i>in-class negotiation</i>.
Class 5 2/5/13	<i>Critical Skills for the Negotiator's Toolbox</i> Distinguishing Empathy and Agreement Recognizing and Acknowledging Emotions Listening and Stepping Into Their Shoes Demonstrating Understanding <i>"I" Messages Exercise</i> <i>Listening/Empathy Exercise</i> Eliciting Interests	<i>Beyond Winning</i>, pp. 9-10, 44-68 (The Tension between Empathy and Assertiveness). <i>Difficult Conversations</i>, pp. 85-108 (Have Your Feelings), pp. 163-184 (Listen from the Inside Out), pp. 217-234 (Putting It All Together). Prepare for <i>in-class</i>

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	Negotiation and Debrief <i>Exercise TBA</i>	<i>negotiation.</i>
Class 6 2/12/13	<i>Understanding Bargaining Styles</i> Small group analysis of styles and report back. Identifying bargaining styles of others. Negotiate and Debrief <i>Exercise TBA</i> <i>Reframing Exercises</i>	Read <i>Bargaining for Advantage</i>, pp. 242-250 (The First Foundation: Your Bargaining Style; Appendix A); <i>Getting to Yes</i>, pp. 82-145. Take and Score the Organizing Styles Assessment Tool from Appendix A in <i>Bargaining for Advantage</i>. Bring your score and graph to class for discussion.
Class 7 2/19/13	<i>Closing and Gaining Commitment</i> Prepare, Negotiate and Debrief <i>Exercise TBA</i> <i>Online Dispute Resolution</i> Origins and Established Uses The Brave New World Expands <i>Debrief email negotiation.</i> <i>Back-to-back email and in-person negotiations.</i>	<i>Bargaining for Advantage</i> pp. 175-195; excerpt provided on Online Dispute Resolution. Conduct email negotiation and post final transcript, highlighting in the document two points you've selected to discuss in class. Submit midterm paper described below by 5 a.m. on Saturday 2/9/13.
Class 8 2/26/13	<i>Ethics</i> Professional Rules and Norms Personal Standards and Attitudes Cultural Competence in Negotiations <i>Negotiate Exercise TBA</i> <i>Side-by-Side Analysis of Negotiation and Ethics</i> <i>Renegotiate and Debrief</i>	Read <i>Bargaining for Advantage</i> pp. 196-236. Recommended: Mnookin, "Professional and Ethical Dilemmas" in <i>Beyond Winning</i>.
Class 9 3/5/13	<i>Transactional Negotiation</i> <i>Negotiate and Debrief Exercise TBA</i>	Recommended: Mnookin, "The Challenges of Deal Making" in <i>Beyond Winning</i>; <i>Women Don't Ask</i>.

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	<i>Negotiate and Debrief Short Exercise TBA</i> <i>Gender and Negotiation</i>	
Class 10 3/12/13	<i>Attorney as Agent in Public Interest Litigation</i> Negotiate & Debrief <i>Exercise TBA</i>	Recommended: <i>Beyond Winning</i> , pp. 178-223 (Behind the Table, Across the Table). Prepare Roles and Conduct Attorney-Client Meetings.
Class 11 3/19/13	<i>Multi-Party Negotiation and Facilitation</i> Negotiate and Debrief <i>Exercise TBA</i>	Recommended: <i>Beyond Winning</i> , pp. 295-314 (Organizations and Multiple Parties). Prepare for <i>in-class negotiation</i> .
Class 12 4/2/13	<i>Attorney as Agent in Business Litigation</i> Side-by-Side Preparation for Client Meetings with Haas Students and Preparation of Negotiation Strategy	Prepare Roles for Negotiation with Haas. No other homework is assigned for this week, as preparation should be meticulous and well documented.
Class 13 4/9/13	Debrief Haas Negotiation Negotiate and Debrief <i>Exercise TBA</i>	Meet with Haas clients to prepare for negotiation. Conduct video negotiation with team; review video together and debrief collectively. Later, with your classmate, identify the most interesting thing you learned in your negotiation and post a one-paragraph description and a video clip of no more than 2 minutes.
Class 14 4/16/13	<i>Final Presentations and Debrief</i> Student will present brief summaries of their final written or negotiated projects for class	Conduct final video negotiations (can be done ahead of time anytime after the 10 th class) and submit

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	discussion.	final written projects by midnight on the FRIDAY before class. Prepare a 3 minute presentation about what interested you most in your final written work or your final negotiation.
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Required Books:

Shell, G. Richard, *Bargaining for Advantage* (2nd edition)

Fisher, Roger & William Uri, *Getting to Yes* (3rd edition)

Stone, Douglas, Bruce Patton & Sheila Heen, *Difficult Conversations* (2nd edition)

Optional Recommended Books:

Mnookin, Robert H., *Beyond Winning*, (2nd printing) (highly recommended)

Babcock, Linda & Sara Leschever, *Women Don't Ask: The High Price of Avoiding Negotiation – And Positive Strategies for Change*

Cain, Susan, *Quiet: The Power of Introverts in a World That Can't Stop Talking*

Online Dispute Resolution Theory and Practice (excerpt only)

COURSE POLICIES

CONFIDENTIAL MATERIALS

Our simulated exercises depend for their effectiveness on the confidentiality of the materials. It would be easy to consult with others who have done a particular exercise in the past, to break the rules by collecting information online, or to collude with your negotiating partner. There is no benefit to engaging in such tactics as you will not be graded on the outcome of your negotiations. But, more importantly, doing so will defeat the entire purpose of the experience, not only for yourself, but also for your classmates. We trust that you will respect this basic premise of the course design.

ATTENDANCE

As a skills-based course that relies on all students to participate in negotiations throughout the semester, attendance is mandatory. Excused absences are limited to medical or family emergencies.

WAIT LIST

Due to the use of simulation exercises throughout the semester all interested students, whether enrolled or on the wait list, should attend the first session, at which time enrollment will be confirmed. If you have questions, please contact Tamara Lange at tamaralange@gmail.com or Elaine Rushing at erushing@jamsadr.com.

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ASSESSMENT

We will be assessing how you engage, how you perform, and your willingness to take risks to expand your skills. What results you get in the simulated negotiations will not be tracked and will not be a consideration in grading.

Your grade will be determined as follows:

60% - Class participation (including attendance, appropriate contribution to class discussions, effective listening in class discussions, and preparation for and level of engagement in exercises and simulations). Effective preparation typically will involve use of one of the templates for organizing relevant considerations or creation of your own outline or strategic plan. (*Bargaining for Advantage* and *Difficult Conversations* each contain a model tool. Over the course of the semester, you should try them out and craft a system that works for you). In addition to the written preparation you do, please spend 5 minutes before each class saying *aloud* your own primary interests and what you believe are your negotiating partner's primary interests. Say "I" and "you" when preparing so that you can begin to get into character.

Please be mindful that your preparation for simulated negotiations affects your classmates. Reviewing materials at the last minute or in a cursory fashion is disrespectful both to your fellow students and to the instructors.

15% - Mid-term paper (5 pages) consisting of self-reflections and insights regarding your developing negotiation skills. Your paper should articulate at least two goals for the second half of the semester and should identify what you think we can do to support your ability to meet those goals. Grading will reward serious self-reflection, including identification and acknowledgement of strengths (without self-aggrandizement) and assessment of limitations and challenges (without self-abasement).

25% - Your Option of (1) A final paper that delves more deeply into a theoretical aspect of negotiation that you have chosen as a topic, (2) a final paper that describes and relates to the course material a real-life negotiation that you conducted during the second half of the semester **OR** (3) A final videotaped negotiation conducted with a classmate. Papers will be reviewed by one or both instructors (8-12 page limits with standard borders, double spacing in Times New Roman or equivalent – submitted in Word to allow use of comment function for review). Video negotiations will be reviewed in person with one or both instructors.

BIOGRAPHIC INFORMATION

Tamara Lange has a private mediation and consulting practice and serves on the San Francisco Superior Court's mandatory settlement conference panel. She previously worked for 15 years as a litigator, including in private firms, as a senior attorney at the ACLU's LGBT & AIDS Project, and for Santa Clara County Counsel, where she created and managed the Impact Litigation & Social Justice Section. Ms. Lange has extensive experience briefing, arguing, and settling complex, high-value, and emotionally charged disputes. Her expertise is in constitutional and public law, and she has represented clients in matters involving

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everything from intellectual property to insurance coverage to family law. Ms. Lange clerked in federal trial and appellate courts and received her J.D. from Berkeley Law, where she was Order of the Coif. Her teaching is informed by her wide-ranging curiosity, her meditation and reiki practices, and her experience as a parent in what she considers to be the most humbling of all negotiated relationships.

Hon. Elaine Rushing was the first woman appointed to the Sonoma County Superior Court and recently retired after serving nearly two decades. In 2005 she spearheaded the popular Superior Court-annexed Mediation Program, in which over 1,000 cases have been successfully mediated. She was elected presiding judge by her colleagues and was awarded a Certificate of Recognition by the Sonoma County Bar Association Alternative Dispute Resolution Section in 2010. She is now a full-time mediator and arbitrator with JAMS. Judge Rushing has extensive experience in a variety of complex practice areas, including business litigation, construction, employment, real estate, trusts, estates, probate, and personal injury. Judge Rushing has served extensively as a faculty member for the Continuing Judicial Studies Program including a yearly class on Law and Literature and has taught Probate to Judges. Judge Rushing obtained her J.D. degree from UC Hastings College of the Law and was Order of the Coif. She was Research Editor of the Hastings Law Journal. She received her B.A. from Syracuse University, Phi Beta Kappa, with Honors in German. A more comprehensive biography of Judge Rushing may be found at www.jamsadr.com.