

Berkeley Law, Spring 2019

Negotiations Law 245, Section 2

Prof. Jasper Kim, JD/MBA
Saturdays: 9:00am-6:00pm (Room 111)
Dates: February 9, 16, and 23
Contact: jasper.kim@law.berkeley.edu
Units: 2

Course Description:

This course meets three (3) times only: *February 9, 16, and 23* (each day falling on a Saturday, 9:00am-6:00pm, with a 1-hour break for lunch). Attendance and participation in all three course sessions is *mandatory*. The afternoons will primarily be used for negotiation simulations (preparation, negotiation, and post-game analysis), which will be one of many key interactive course features.

How do you prepare for a negotiation? How do you communicate effectively in a negotiation, even if you don't like conflict? Should you aspire to "win" in negotiations? Are negotiators driven by fear or logic? How do you break negative emotional states? How do you recognize and rectify implicit biases? What is your best strategy for a negotiation? To create a roadmap to think about these important issues, this highly interactive course provides a framework to "think like a negotiator" from both a domestic and international as well as legal and business emphasis.

Each course session will involve active engagement in a variety of negotiation-related scenarios—including negotiation simulations, actionable concepts, and experiential exercises. You will also have the opportunity to learn different conceptual frameworks underlying negotiation theory and practice, including positional bargaining, integrative bargaining, communication skills, psychological influences, and negotiation power.

Throughout this course, you will learn various strategies on how to get others to want what you want through persuasion, sway, and influence underlying your negotiations. As part of this, you will develop skills on how to *constantly improve as negotiators* by asking the right questions, framing issues, and negotiating with others with different skill sets, perceptions, experiences, and backgrounds. Ultimately, this course may help to learn more about yourself.

The length of the assignments will reflect the credit requirement. Due to the use of simulation exercises throughout the semester and the need to determine members of the class as soon as possible, the usual provisions of "Add/Drop" do not apply. All interested students, whether enrolled or on the wait list, *should attend the first session* at which time enrollment will be confirmed. Enrolled students who are *not* present during the first class may be dropped at the instructor's discretion. If you attend the first session and are admitted to the class, and you subsequently decide to drop the class, you must do so before the second class meeting. Enrollment is limited due to the highly interactive nature of this course. Because of the intensive nature of the course's limited number of class sessions, *attendance in each and every class session is mandatory*.

Objectives:

On successful completion of this subject, students will be positioned to:

- Understand how and why conflict arises between people and organizations, with both

a domestic and international flavor

- Apply and leverage the main conceptual frameworks related to transaction planning and conflict resolution within diverse environments--including distributive, integrative, and mixed motive negotiation styles
- Analyze and synthesize negotiation theories, skill-sets, and studies as current or future professionals
- Recognize both the implicit and explicit biases that may hinder negotiations, while developing strategies on how to bridge such gap
- Develop, and learn to continuously develop, a value-added negotiation toolbox and confidence as negotiators
- Enhance effective communication skill-sets, both verbal and nonverbal, and develop an empathetic understanding of how and why counterparties may see things differently from you
- Possess an understanding of the nature of disputes and conflict resolution, including ethical, cultural, economic, psychological, and emotional factors

Required Book:

Persuasion: The Hidden Forces That Influence Negotiations, Jasper Kim (Routledge Press, New York, 2018)*.

* Available in both Kindle (around \$11.99) or hardcopy versions (around \$47.15) via Amazon, Routledge or other book sellers worldwide. You are free to read ahead of the course schedule; see Course Schedule.

Optional Books:

Negotiation and Settlement Advocacy, L. Randolph Lowry and Charles Wiggins (2nd edition, 2003; also available at the Berkeley Law library)

Bargaining for Advantage: Negotiation Strategies for Reasonable People, Richard Shell, 2006

Getting to Yes: Negotiating an agreement without giving in, Roger Fisher and William Ury (2011; or any edition)

Materials:

The effectiveness of this course is highly dependent on the confidentiality of its materials, including the course's many simulation cases. Please ensure to not share your confidential materials to any other person or organization at any time, inside or outside the course.

Assessment:

The course assessment will be based on how you engage, how you perform, and your willingness and actions that allow you to expand your negotiation skills over the course. What results ("yes" or "no" in a negotiation simulation) you get in the simulated negotiations will generally not be a factor in course grading.

Your grade will be determined by the following below:

40% - Class Participation (including attendance, contribution to class discussions, and preparation for and level of engagement in exercises and simulations). Please be mindful that your preparation for simulated negotiations affects your classmates. The substantive quality of your preparation is part of your Class Participation grade. When debriefing and discussing negotiation simulation cases, and throughout the course, please be respectful of your fellow peers, and mindful of how your feedback may be interpreted by others. Note that some or all class sessions and/or negotiation simulations may be video recorded for educational purposes related to this course and its participants.

30% - Negotiation “Self-Reflection” Journal (7-10 pages total) consisting of self-reflections and insights regarding your developing negotiation skills. Your Self-Reflection Journal for each of the four class sessions should articulate 3-5 themes/concepts/simulations related to each of the course’s full-day class session. A written analysis of serious self-reflection, including identification and acknowledgement of strengths, improvement areas needed, and importantly, your takeaway lessons gained are important elements for your Self-Reflection Journal. Note that this Journal should read as a “journal” rather than mere class notes, in the spirit of constant improvement as negotiators. Your final Journal (combining all course Sessions #1-4) will be due *on or before MARCH 25 via BCourses (Mon, 9:00am PT)*.

30% - Final Paper (7-10 pages) that delves more deeply into an actual negotiation/conflict/transaction that you have chosen as a topic. Importantly, a central metric used in evaluating your Final Paper is its incorporation and synthesis of the course concepts, readings, simulations, and cases. Although there is not one “correct” approach, as a broad guideline, your Final Paper can include both subjective and objective elements. Subjective elements could include such things as: (i) challenges or advantages faced as well as your thoughts and feelings of the negotiation process, as a negotiation specialist; and (ii) your recommendations and thoughts as to how the negotiation situation could have been improved and created more value towards reaching an optimal negotiated outcome. Objective elements in your Final Paper could include such things as (i) the progression of the negotiation session; and (ii) the material terms and conditions of the final agreement between the parties. To re-emphasize, it is important that you incorporate as many related course concepts/theories/articles/simulations as possible to your Final Paper (to demonstrate you have read, understood, and can apply the various course concepts). NOTE: A separate “Final Paper Guideline” will also be uploaded onto bCourses. Your Final Paper will be due *on or before MARCH 25 via BCourses (Mon, 9:00am PT)*.

For clarity, both your Self-Reflection Journal and Final Paper will be due by MARCH 25 (Mon). For all written assignments, *any reasonable format is acceptable and can be used*. Bluebook citation method is *not* required. Page lengths above for both papers roughly assumes 250 words/page for single-spaced papers, and 500 words per page for double-spaced papers.

Instructor Profile:

Jasper Kim, JD/MBA is a Senior Fellow at Melbourne Law School, Lecturer in Law at Berkeley Law, former visiting scholar at Stanford University and Harvard University, and Director at the Center for Global Conflict Management and professor at the Graduate School of International Studies at Ewha University. He has consulted for various embassies, financial institutions, government entities, law firms, and media organizations worldwide. Previously, he worked for Barclays Capital, Credit Suisse, and Lehman Brothers as a lawyer. Jasper Kim received his MSc degree from the London School of Economics (LSE), MBA degree from the University of London, JD degree from Rutgers University School of Law, and negotiation training at Harvard Law School’s Program on Negotiation. Jasper Kim’s books include ABA Fundamentals: International Economic Systems (ABA 2012), 24 Hours with 24 Lawyers: Profiles in Traditional and Non-Traditional Careers (West 2011), American Law 101: An Easy Primer on the U.S. Legal System (ABA 2015), and Persuasion: The Hidden Forces That Influence Negotiations (Routledge 2018).

COURSE SCHEDULE

(subject to possible change)

Session 1: February 9 (Saturday: 9:00am-6:00pm) (12:30pm-1:30pm lunch) Total hours: 8

(Note: No assignment exists or is due for this course session)

Concepts	<p>Why negotiate? What is your bargaining “style”?</p> <p>“Success” in negotiations means...?</p> <p>Does “negotiation strategy” exist?</p> <p>Bargaining Style, Distributive Bargaining Model / Competitive Mindset</p> <p>Cooperate or Betray?: How to strategize on your negotiation strategy</p> <p>“War Games” analyzed – who really “wins”?</p> <p>Dominant Strategies in PD (Prisoner’s Dilemma) / GPS strategy</p> <p>Bargaining “battle zones”: (AP, RP, ZOPA, Bargaining Zone, Insult Zone)</p>
Simulations & Experiential Games (in-class)	<p><i>“Bargaining Styles Assessment Tool” (Bargaining For Advantage, Appendix A, p. 237-250).</i></p> <p><u>War Games</u>: Betray or cooperate? (Price bidding game between two competing pharmaceutical companies) - Preparation / Game Participation / De-Brief</p> <p>Youtube videoclips: Which is a “negotiation” and why?</p> <p><i>Grade Games</i> simulation (applying PD to what grades students want) - Preparation / Game Participation / De-Brief</p> <p><u>Buena Vista Hotel vs. Sun Supply simulation</u> (involving the possible purchase of hotel uniforms for a grand opening) - Preparation / Participation / De-Brief</p>
Readings	<p><u>Required Readings</u>: Persuasion, Chapters 5-7</p> <p>Optional Reading: Bargaining for Advantage, p. 3-39 / Negotiation & Settlement Advocacy, Chapters 1 (all), 2 (all) / Getting to Yes, p. 1-41</p>

Session 2: February 16 (Saturday: 9:00am-6:00pm) (12:30pm-1:30pm lunch) Total hours: 8

(Note: No assignment exists or is due for this course session)

Concepts	<p>Bargaining Style: Integrative Bargaining / Cooperative Mindset</p> <p>The Negotiation Gatekeepers: Communication and Relationships</p> <p>The Circle (of Value): Interests, Options, and Legitimacy</p> <p>BATNA / WATNA</p> <p>7 Elements</p> <p>Anchoring / Linkage</p> <p>First Offers: Should you make the first offer?</p> <p>Mitigating Mutually Assured Destruction</p> <p>Cross-border Agreements: Avoiding lost in translation</p>
Simulations & Experiential Games (in-class)	<p>Communication breakdown or opportunity: <i>Tapping game</i> (choosing 3 songs to communicate to a classmate by tapping)</p> <p>Finding similarities amid differences: <u>"3 Likes" Game</u></p> <p>Superstar Hollywood Power Couple: Positions vs. Interests</p> <p><u>Tech Social Start-Up simulation</u> (exploring interests rather than positions relating to a potential start-up buyout) - Preparation / Participation / De-Brief</p>
Readings	<p><u>Required Reading</u>: Persuasion: Chapters 1-3</p> <p>Optional Reading: Bargaining for Advantage, p. 40-113 / Negotiation & Settlement Advocacy, Chapters 3 (all), 7 (p. 253-272), 16 (p. 589-628) / Getting to Yes, p. 42-81</p>

Session 3: February 23 (Saturday: 9:00am-6:00pm) (12:30pm-1:30pm lunch) Total hours: 8
 (Note: No assignment exists or is due for this course session) (This is the third and last course session)

Concepts	<p>Are we “rational” bargainers (always)?</p> <p>“Fairness” equals what? Do partisan perceptions exist? Is fairness universal?</p> <p>Ethical Bargaining: Exploring your moral compass</p> <p>Bargaining Style: Mixed Motive / Cooperative & Competitive Mindsets (blended approach)</p> <p>Psychological influences / Framing / Likeness Theory</p> <p>Linkage / Relationships / Mirroring / Communication</p> <p>Emotional bargaining / GRIT IPA</p>
Simulations & Experiential Games (in-class)	<p><u>Simulation Preparation:</u> Class time will be provided for preparation for today’s simulations.</p> <p>The Reality or “Fake Reality” of Rationality: The <i>Money Bidding Auction</i> (What would you pay to get paid?) (Applying rational choice vs. emotional bargaining) - Preparation / Game Participation / De-Brief</p> <p>What would you choose vs what should you choose? - Preparation / Game Participation / De-Brief</p> <p>Getting to “Fair Value”: <i>Ultimatum Games</i> / Dictator Games</p> <p>The Trolley Problem</p> <p><i>GPA v. Teck</i> (transboundary pollution case involving a private firm, government regulatory agency, and an indigenous tribe) - Preparation / Participation / De-Brief</p> <p>Anchoring / Linkage</p> <p><u>Job Recruitment simulation case</u> (if time allows) - Preparation / Participation / De-Brief</p>

Readings	<p><u>Required Reading:</u> Persuasion: Chapters 4, 8</p> <p>Optional Reading: Bargaining for Advantage, p. 242-250 / Negotiation & Settlement Advocacy: Chapters 4 (p. 106-136), 8 (p. 329-349), 9 (all) / Getting to Yes, p. , 82-130</p> <p>***REMINDER OF ASSIGNMENTS DUE: <i>BOTH your (1) Self-Reflection Journals (for all Class Sessions #1-3) and; (2) Final Paper are due by (or before) <u>March 25</u> via BCourses (Mon, 9:00am PT)</i>***</p>
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