**Negotiations**

Fall 2014: Tuesdays 6:25 p.m. - 9:05 p.m.

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**Introduction**

This practice-centered course will prepare students to negotiate more effectively on behalf of clients, with colleagues and in personal relationships. Most law school courses teach legal principles, exposition and assertion. This class focuses on the fine arts of listening, strategy and persuasion. Discussions of negotiation theory and the use of power will inform weekly negotiation practice exercises. Students will be supported to develop their own negotiating instincts and organizing principles. Class exercises will cover core concepts, including identifying and engaging the conflict, creating and claiming value, multi-party dynamics, client counseling, difficult tactics and listening skills.

In addition, this class will explore some of the essential building blocks for effective negotiation: internal quiet, an ability to distinguish between instinct and fear, confidence in one’s power to say no, the capacity to empathize without taking responsibility, respect for one’s opponent and clarity of purpose.

There is no greater misfortune
than underestimating your enemy.
Underestimating your enemy
means thinking that he is evil.
Thus you destroy your three treasures

[simplicity, patience, compassion]
and become an enemy yourself.

When two great forces oppose each other,
the victory will go
to the one that knows how to yield.

-Tao de Ching #69 (S. Mitchell)

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. Use of office hours is encouraged to allow ample time for individual feedback and coaching. Students will be encouraged to investigate the role of negotiation in their personal lives, but sharing the results of that investigation, while welcome, will be neither required nor rewarded.

Each student will lead the class in discussion of a reading assignment, relating the author’s ideas to the framework of the course and assessing the practical value of the author’s theories and recommendations.

**Course Objectives**

* Develop effective strategies for each stage of a negotiation, including preparation
* Become familiar with different negotiation styles and understand effective responses to competitive negotiation techniques
* Understand how adversarial and collaborative bargaining differ and develop the capacity both to negotiate effectively in either context and to invite collaboration even in adversarial situations
* Enhance communication skills: listening, persuasion and relationship-building
* Develop both flexibility and the ability to set clear limits
* Develop tools for diffusing implicit bias in negotiation dynamics
* Understand the challenges of cross-cultural negotiation
* Understand ethical responsibilities of the lawyer representative
* Learn techniques for concluding a negotiation successfully, including crafting durable and enforceable agreements

**Assignments**

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|  | **Class Material** | **Homework Due** |
| **Class 1** 8/26/14 | *Introduction to Negotiation* * 1. Partner Introductions
	2. Negotiation as a juggling act: gathering information, effective use of questions, listening, using silence, reflecting understanding, reframing, analyzing strategy.
1. *Haggle* demonstration
	1. *Haggle* debrief
	2. TheDispute Resolution Spectrum
2. Recognizing negotiation as an option
3. BATNA/WATNA
4. Distributive vs. Integrative Bargaining
	1. Exercise
	2. Prepare, Negotiate and Debrief *Batmobile*
 | Read: *Bargaining for Advantage,* pp. 3-39; *Difficult Conversations,* Introduction and pp. 1-20.Do *Haggle Exercise*: 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, including what got in your way and what moved you forward.[[1]](#footnote-2) |
| **Class 2**9/2/14 | *Critical Skills for the Negotiator’s Toolbox* * 1. Distinguishing Empathy and Agreement
	2. Recognizing and Acknowledging Emotions
	3. Listening and Stepping Into Their Shoes
	4. Demonstrating Understanding
	5. *“I” Messages Exercise*
	6. *Listening/Empathy Exercise*
	7. *Eliciting Interests Exercise*
	8. Negotiate and Debrief *Carter Estates*

 | *Beyond Winning,* pp. 9-10, 44-68 (The Tension between Empathy and Assertiveness). *Difficult Conversations,* pp. 85-108 (Have Your Feelings), pp. 163-184 (Listen from the Inside Out), pp. 217-234 (Putting It All Together) (you may at some point wish to read the entire book for more in-depth discussion of the “three conversations”).Prepare for *in-class negotiation*. |
| **Class 3**9/9/14 | *Separating Positions and Interests** 1. Identifying and Articulating Interests
	2. Avoiding Taking Positions
	3. Anchoring & Centering Techniques
	4. Expressing Yourself Effectively
	5. Anchoring exercise

Negotiate and Debrief *Sally Soprano* | Read *Difficult Conversations*, pp. 185-200 (Expression); posted reading excerpts. Prepare for *in-class negotiation*. Please review preparation expectations below (under “Assessment”).  |
| **Class 4**9/16/14 | *Invoking Standards and Norms**Leverage and Exchanging Information* Debrief Sally Soprano RenegotiationOngoing Relationships & the Prisoner’s Dilemma - Conduct and Debrief *Win As Much As You Can*Negotiate and Debrief *The Law Library* | Read *Bargaining for Advantage,* pp. 40-174.E-mail, chat or in-person further negotiation of Sally Soprano with original partner. Prepare for *in-class negotiation*. |
| **Class 5**9/23/14 | *Understanding Bargaining Styles*Small group analysis of styles and report back.Identifying bargaining styles of others.Negotiation and Debrief *The Biography*  | Read *Bargaining for Advantage*, pp. 242-250 (The First Foundation: Your Bargaining Style; Appendix A); *Getting to Yes,* pp. 82-145. Take and Score the Organizing Styles Assessment Tool from Appendix A in *Bargaining for Advantage.* Bring your score and graph to class for discussion.  |
| **Class 6**9/30/14 | *Attorney as Agent in Public Interest Litigation*Negotiate & Debrief *Baker & Irwin**Negotiate and Debrief Farmer’s Group* | Recommended: *Beyond Winning*, pp. 178-223 (Behind the Table, Across the Table).**Submit midterm paper described below by 5 a.m. on Saturday 10/4/14** |
| **Class 7**10/7/14 | *Debrief Real-Life Negotiations Homework**Creating and Distributing Value** 1. 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 and Debrief *Super Slipster**Personal Injury Concession Exercise* | Conduct a real-life negotiation with someone with whom you have an ongoing relationship. Write up your thoughts, noting use of listening skills, standards and norms, leverage, and timing and quality of exchange of information. What significance did continuing relationship play in the negotiation? You may submit your analysis for feedback but are not required to do so. Prepare for *in-class negotiation*. |
| **Class 8**10/14/14 | *Closing and Gaining Commitment*Negotiate and Debrief *Mountain View Farm**Online Dispute Resolution** 1. Origins and Established Uses
	2. Pros and Cons

*Debrief email negotiation.**Reframing Exercises* | *Bargaining for Advantage pp.* 175-195; excerpt provided on Online Dispute Resolution. Conduct email negotiation of The Book Contract and post final transcript, highlighting in the document two points you’ve selected to discuss in class. Find partner(s) for final negotiation and identify a proposed topic or context on which to focus.  |
| **Class 9**10/21/14 | *Ethics** 1. Professional Rules and Norms
	2. Personal Standards and Attitudes
	3. Cultural Competence in Negotiations
	4. Negotiate *DONS*
	5. Side-by-Side Analysis of Ethical Issues
	6. Continue negotiation of *DONS*
	7. Cognitive Bias Exercise
 | Read *Bargaining for Advantage pp.* 196-236. Recommended: Mnookin*, “Professional and Ethical Dilemmas”* in *Beyond Winning.*  |
| **Class 10**10/28/14 | *Gender and Negotiation* * 1. Big Law negotiation exercise
	2. Power positions & implicit bias research
	3. Negotiate and Debrief *The Axis Affair*
 | Read: Posted reading excerpts.  |
| **Class 11**11/4/14 | *Attorney as Agent in Business Litigation*Side-by-Side Preparation for Client Meetings with Haas Students Preparation of Negotiation Strategy | Prepare Roles for Negotiation with Haas. No other homework is assigned for this week; preparation should be meticulous and well documented. |
| **Class 12**11/18/14 | Boalt/Haas NegotiationNegotiate and Debrief *Remicade* | Meet with Haas clients to prepare for negotiation.Conduct video negotiation with team; review video together and debrief collectively. Post a one-paragraph description with an option video clip of no more than 2 minutes.  |
| **Class 13**11/25/14 | *Putting it All Together* Negotiate and Debrief *Ellsworth v. Ellsworth* | Prepare for in class negotiation (substantial preparation time and coordination required). |
| **Class 14**12/2/14 | *Multi-Party Negotiation and Facilitation*Negotiate and Debrief *Riverbend* | Recommended: *Beyond Winning*, pp. 295-314 (Organizations and Multiple Parties); Mnookin, “*The Challenges of Deal Making”* in *Beyond Winning*.Prepare for *in-class negotiation*. |

***At the end of every negotiation, you should debrief with your partner(s) as follows:***

(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, go back and try that piece again.

**Required Books**:

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

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

**Recommended Books (excerpts will be provided)**:

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

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

Ury, William, *The Power of a Positive No*

Williams, Joan*, What Works for Women at Work: Four Patterns Working Women Need to Know*

**COURSE POLICIES**

CONFIDENTIAL MATERIALS

The 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 exercise, not only for yourself, but also for your classmates. Please respect this basic premise of the course design.

ATTENDANCE

This course relies on all students to attend because there are in-class negotiations throughout the semester. Excused absences are limited to emergencies to minimize the negative impact on classmates when one student is absent. At the end of the semester, any students who have missed a class due to illness or other emergency will be paired to do a make-up negotiation.

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.

MATERIALS FEE

There will be a $30 materials fee due at the beginning of the semester. If the fee would prevent you from taking the course, please contact me directly.

ASSESSMENT

*I 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:

65% -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 submit a paper copy of your written preparation for each negotiation. It should be written for your own purposes and may be scribbled, visually organized, in bullet points or charted; I just want to see what you’re doing.

*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 professor.*

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 the professor and your classmates 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).

20% - Your Option of (1) A final paper of no more than 10 pages that delves more deeply into a theoretical aspect of negotiation that you have chosen as a topic, (2) a final paper of no more than 10 pages that describes and relates to the course material a real-life negotiation that you conducted independently during the second half of the semester **OR** (3) A final videotaped negotiation conducted during one of the last two class sessions, and a five-page paper analyzing your performance in that negotiation, after reviewing the video.

BIOGRAPHIC INFORMATION

Tamara Lange has a private mediation practice and is a senior attorney at the National Center for Youth Law. She is a settlement conference officer for the San Francisco Superior Court and serves on the Alameda County Superior Court’s mediation panel. Ms. Lange has worked as a litigator for nearly 20 years, including in large and small private firms, as a senior attorney at the ACLU’s LGBT & AIDS Project, and as a Lead Deputy for Santa Clara County Counsel, where she created and managed the Impact Litigation & Social Justice Section. She clerked for the Hon. Richard A. Paez and the Hon. William A. Fletcher and received her J.D. from Berkeley Law, where she was Order of the Coif.

Ms. Lange has extensive experience briefing, arguing, and settling complex, high-value, and emotionally charged disputes. Her primary expertise is in constitutional and public law, but she has represented clients in matters involving everything from intellectual property to insurance coverage to family law. Her teaching is informed by her wide-ranging curiosity, her meditation and reiki practices, and her experience as a parent in what she considers the most humbling of all negotiated relationships.

1. 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. [↑](#footnote-ref-2)