**Negotiations**

Fall 2014: Thursdays 10:00 a.m. – 12:40 p.m.

Judge Elaine Rushing – [erushing@jamsadr.com](mailto:erushing@jamsadr.com) - 408 806-6409

**Introduction**

This seminar is designed to teach students to become better negotiators and to represent clients effectively in both transactional and dispute resolution settings. The structure of the course emphasizes both theoretical and experiential learning. Since negotiation is something you learn by doing, we will engage in hands-on negotiation simulations throughout the course. These simulations are designed to enhance your skills, demonstrate concepts, and provide you with opportunities to experiment with various negotiation techniques. In addition, we will discuss theories of negotiation and use them to analyze the simulated negotiations. As a result, we will move back and forth between theory and practice, applying lessons from theory to our negotiation practice, and drawing lessons from our experience to critique theory.

Each student will be paired with another student to lead a class discussion of one reading assignment. This involves an explication of the text, an elucidation of the author’s point of view, an explanation of how the ideas expressed fit into the course’s framework, and an examination of the usefulness of the ideas.

 Course Objectives

* Familiarize the student with various negotiation approaches and styles, including competitive and collaborative bargaining
* Understand and develop effective strategies for each stage of a negotiation
* Enhance communication skills, emphasizing effective use of listening and relationship-building
* Explore psychological forces and cognitive biases that affect decision-making
* Learn techniques for concluding a negotiation successfully, including crafting durable and enforceable agreements

Exercises will include negotiation of business, family law, environmental, tort, probate, and multi-party international diplomacy disputes as well as business deals.  At a general level, we will move from negotiations that involve fewer factors to ones that are more complex. By the end of the course, however, we hope that you will appreciate the layered complexity that was involved in what first appeared to be simple negotiations.

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | | **Class Material** | **Homework Due** |
| **Class 1**  8/28/14 | *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.   3. *Haggle* debrief   4. TheDispute Resolution Spectrum  1. Recognizing negotiation as an option 2. BATNA/WATNA 3. Distributive vs. Integrative Bargaining    1. Exercise    2. Prepare, Negotiate and Debrief *Batmobile* | Read: *Getting to Yes,* Introduction and pp. 3-15;  *Bargaining for Advantage,* pp. 3-39; (Recommended: *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**  9/4/14 | | *Separating Positions and Interests*  Identifying and Articulating Interests  Avoiding Taking Positions  Expressing Yourself Effectively  Negotiate and Debrief *Sally Soprano* | Read *Getting to Yes,* pp. 19-57 (Separate the People from the Problem; Focus on Interests, Not Positions) and 149-164 (10 Questions People Ask) |
| **Class 3**  9/11/14 | | |  | | --- | | *Invoking Standards and Norms*  *Leverage and Exchanging Information*  Student Group No. 1 to Discuss Readings  Debrief *Sally Soprano* Renegotiation  *Ongoing 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. 40-113  Prepare for *in-class negotiation*. Please review preparation expectations below (under “Assessment”).   |  | | --- | | Renegotiate *Sally Soprano* with assigned partner.  When finished, *take a few minutes to note feedback for yourselves and share in person:*  (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. | |
| **Class 4**  9/18/14 | | Debrief *Real-Life Negotiations Homework*  Student Group No. 2 to Discuss Readings  *Creating and Distributing Value*  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* | |  | | --- | | Read *Getting to Yes*, Ch. 4: Invent Options for Mutual Gain and *Bargaining for Advantage,* pp. 117-175  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? |   Prepare for *In-class negotiation* |
| **Class 5**  9/25/14 | | *Understanding Bargaining Styles*  Student Group No. 3 to Discuss Readings  Small group analysis of styles and report back.  Identifying bargaining styles of others.  Negotiation and Debrief *The Axis Affair* | 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**  10/2/14 | | | |  | | --- | | *Critical Skills for the Negotiator’s Toolbox*    Student Group No. 4 to Discuss Readings    Distinguishing Empathy and Agreement        Recognizing and Acknowledging Emotions        Listening and Stepping Into Their Shoes        Demonstrating Understanding    *“I” Messages Exercise*    *Listening/Empathy Exercise*    Eliciting Interests Preparation    Negotiate and Debrief *The Biography* | |  | | Read TBA  **Submit midterm paper described below by 5 p.m. on Friday, 10/3/14** |
|  | |  |  |
| **Class 7**  10/9/14 | | *Ethics*   * 1. Professional Rules and Norms   2. Personal Standards and Attitudes   3. Cultural Competence in Negotiations   Student Group No. 5 to Discuss Reading   * 1. Negotiate *DONS*   2. Side-by-Side Analysis of Ethical Issues   3. Continue negotiation of *DONS*   4. Cognitive Bias Exercises | Read *Bargaining for Advantage pp.* 196-236 |
| **Class 8**  10/16/14 | | *Closing and Gaining Commitment*  Student Group No. 6 to Discuss Reading  Negotiate and Debrief *Mountain View Farm*  *Online Dispute Resolution*   * 1. Origins and Established Uses   2. Pros and Cons | Read *Getting to Yes, pp. 97-145 and*  *Bargaining for Advantage pp.* 175-195; excerpt provided on Online Dispute Resolution.  Prepare for *in-class negotiation* |

|  |  |  |
| --- | --- | --- |
| **Class 9**  10/23/14 | *Transactional Negotiation*   1. Debrief email negotiation    1. Negotiate and Debrief *Bog Berries v. FEA* | Conduct email negotiation with students from another law school and post final transcript, highlighting in the document two points you’ve selected to discuss in class.    Prepare Roles for *Remicade* Negotiation with Haas. Preparation should be meticulous and  well documented |
| **Class 10**  10/30/14  **Class 11**  **11/4/14** | *Attorney as Agent in Business Litigation*  Side-by-Side Preparation for Client Meetings with Haas Students  *Attorney as Agent in Business Litigation*  Negotiate and debrief Remicade with Haas Students in the evening | Prepare for *In-class negotiation on 11/6/14* |
| **Class 12**  11/6/14 | *Attorney as Agent in Public Interest Litigation*  Negotiate and debrief *Baker & Irwin* | Prepare for *In-class negotiation* |
| **Class 13**  11/20/14 | *Putting it All Together*  Negotiate and Debrief *Ellsworth v. Ellsworth* | Prepare for *in class* *negotiation* (substantial preparation time and coordination required). |
| **Class 14**  12/4/14 | *Multi-Party Negotiation and Facilitation*  Negotiate and Debrief *Riverbend* | 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)

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

**Recommended Book**

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

**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, or (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.

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)