



Hamline University School of Law

Negotiation

J-term Term 2013

January 2, 3, 4, 5 9:00am – 4:30pm

Professor Kenneth H. Fox
Director, Conflict Studies
Senior Fellow, Dispute Resolution Institute
305 East Hall, 523-2411 kenfox@hamline.edu

“[T]he lawyer is sure to be asked, ‘Do you think we could settle this thing?’ Away from judicial chambers and the courtroom, the lawyer is thus initiated into the negotiation process, the single most prevalent and important legal decision-making system.” Donald. G. Gifford, Legal Negotiation: Theory and Applications.

“Every company today exists in a complex web of relationships, and the shape of that web is formed, one thread at a time, through negotiations.” Danny Ertel. *Turning Negotiation Into a Corporate Capability*. Harvard Business Review, May-June 1999

About this course

Negotiation is a constant in our professional and personal lives. Lawyers negotiate with opposing counsel, co-counsel, judges, clerks, clients, law partners, office colleagues and staff. Business people use negotiation to make and save deals; to secure supplies, assure services, keep customers happy, maintain healthy work environments, build and repair relationships. Individuals negotiate at home, in the store and on vacation, with family, friends, and strangers. It is a constant part of our lives. Negotiation is something we have all practiced – with greater or lesser success – for as long as we have interacted with others. As a result, you come to this class with negotiation experience, if not expertise.

The purpose of this course is to build on and improve your existing negotiation skills. We will do this by bringing theory together with practice through (short) lectures, discussion, group exercises, negotiation activities, and written assignments. The course is divided into four broad areas: Understanding conflict and the contexts in which negotiations occur; Adversarial (or competitive) negotiation; Problem-solving (or collaborative) negotiation; and factors that affect the negotiation process (such as ethics, cultural context, legal and business settings).

Advance Readings

We will use two texts and a supplemental course reader for this class. I have tried to spread the readings out somewhat evenly, however, a four day course makes for an unavoidably

large amount of reading. As a result, I suggest you read as far ahead as you can to ease the reading during the course week itself. I expect you will have completed all readings as assigned, including the reading for our first day of class. In order to even out the readings, I strongly suggest you read all of the assigned text from Getting to Yes in advance (it is relatively quick reading). As you read this text, reflect on conflicts you have been in and try to put the concepts to use: What were the interests at stake? What positions did you/they take? What was each party's BATNA (Best Alternative to a Negotiated Agreement)? Reflecting on your own experiences as you read will help you understand the concepts more fully, and can be rather interesting.

The texts for this course are:

Beyond Winning: Negotiating to Create Value in Deals and Disputes by Robert H. Mnookin (hereafter "**BW**"); and

Getting to Yes: Negotiating Agreement Without Giving In by Roger Fisher, William Ury and Bruce Patton (hereafter "**GTY**").

In addition, you will have several readings from a supplemental course reader, as outlined on the detailed daily schedule, below.

Course Requirements.

Attendance. You must attend all class meetings (on time) and complete all reading and written assignments, as described below. Because of its intensive and interactive course format, you cannot receive academic credit if you are absent from any class. In addition, your active participation in class is essential to your success in this course. While there will be lectures and other formal presentations, the majority of class time will be devoted to activities and simulations in which all students participate. These activities are fun, but also directly related to bringing together theory with practice. If you are not present, you cannot learn.

Participation. Each student contributes to class discussions in his or her own way. So you will know how I gauge participation, I will assess each student's willingness to seriously engage the topics under consideration, as well as the quality and thoughtfulness of your contributions and insights. In other words, it is primarily the *quality* (and not necessarily the *quantity*) of your contributions to discussions and exercises that matter to me. Effective and thoughtful comments demonstrate your recognition of the key concepts we are studying and add your unique (but relevant) perspective to discussions, for the enrichment of all.

For simulations, I expect you will make a good faith effort to play your assigned role as realistically as possible. In addition, as part of some exercises, I will be asking you to share feedback with your fellow students. When giving feedback, I ask that you follow these guidelines:

- Include a balance of positive and constructively negative feedback ("criticism" is *not* constructively negative).
- Be honest while remaining respectful. Honesty promotes real growth and learning. Respect allows your comments to be heard and understood in meaningful ways.
- Be specific. Give concrete examples to illustrate your positive feedback and constructive suggestions.
- Relate your feedback to the concepts we are studying in class.

Written Assignments. You will have a total of three (3) written assignments for this class. For all written submissions, please do not identify yourself by name. Instead, you should use the exam number issued to you at the beginning of the course:

You will have two (2) **short reflective papers**. These papers are designed to help you think about and integrate what we are learning at particular points in class from readings, simulations, lectures and class discussion. They are graded based on your analysis and insight. Although they are reflection papers, they are more than simple "journals." As a result, I will also assess the degree to which they are well organized, clearly written and have been proof-read for grammar and spelling. Each paper is to be approximately three (3) pages in length (12 point type, standard margins).

1. First paper, due January 4 at the beginning of class. What do you think your negotiation strengths are? Weaknesses? Describe (very briefly) a real negotiation situation in which you were recently involved. With that situation in mind, how do you describe the negotiation approach you took, in light of the Thomas-Kilmann conflict mode categories and other exercises we did in class? How effective was the negotiation? What skills do you wish you had to improve as a negotiator?

2. Second paper, due January 5 at the beginning of class. Making specific reference to readings, lecture, discussions and simulations: What are the relative strengths and limitations of each, adversarial (resource claiming) and resource creating (problem-solving) approaches to negotiation? What insights have you gained about yourself as a negotiator, including specific reference to your preferred approach to negotiation? What do you believe or assume about others as negotiators? How can you use these insights to become a better lawyer or other professional?

3. In addition to the two (2) short reflective papers, you will also complete a **final paper**, which is **due at 4:30pm on Monday, January 21, 2013** (two weeks after the end of class). I will hand out the final question for this paper on the last day of class. This final paper will allow you to apply the concepts we have studied and practiced throughout the class. Like the reflective papers, your grade will be influenced by the degree to which you draw upon (and make specific reference to) readings and apply key course concepts. I will provide specific instructions on how and where to turn in your final paper at the time the assignment is distributed.

Grading. Your grade will be based on the following:

- 20% -- Attendance and meaningful participation
- 30% -- Short reflective papers
- 50% -- Final paper

Note: Academic Rule AR-105(B)(8): A student who does not take a scheduled examination will receive a grade of "F" for that examination, unless properly excused. In addition, **any student who does not turn in a required paper on the scheduled date will receive a grade of "F" for that paper, unless properly excused. Failure to meet any course requirement can be the basis for a final grade of "F" in the class, unless properly excused.**

Class Schedule and Preparation

January 2

Focus

Introduction and course overview; Negotiation in the larger conflict and social context; Awareness: Self, other and context; Introduction to negotiation theory and key concepts.

Preparation for this class

Beyond Winning (BW) Introduction (pps. 1 - 10)

Supplemental Reader

Tab 1 Riskin, *Knowing Yourself: Mindfulness*

Tab 2 Rubin, *Some Wise and Mistaken Assumptions About Conflict and Negotiation*

January 3

Focus

Adversarial negotiation: the tension between creating and distributing value; the tension between empathy and assertiveness; emotion, power and Influence; games theory.

Preparation for this class

BW Chapters 1 and 2 (pps. 11- 68)

NOTE: First reflective paper due at beginning of class tomorrow morning

January 4

Focus

Problem-solving negotiation: the tension between creating and claiming value; psychological barriers; Listening skills

Preparation for this class

BW Chapters 6, 7, 8, 9, and 10 (pps. 156-272)

Getting to Yes (GTY) Chapters 1, 2, 3, 4, and 5 (pps. 1-81); Chapters 6, 7, and 8 are optional (pps. 95-144)

NOTE: Second reflective paper due at beginning of class tomorrow morning

January 5

Focus

Planning and Preparation; The tension between principle and agents; Multiple party negotiations; Group identity and social context; Breaking Impasse; Negotiation ethics; Synthesis.

Preparation for this class

BW Chapters 3, 11, 12 and conclusion (pps. 69-92; 273-294; 295-314; 315- 323)

Supplemental Course Reader

Tab 3 Kolb, *Gender is More than Who We Are*

Tab 4 Salacuse, *Ten Ways that Culture Affects Negotiation Style: Some Survey Results,*

Tab 5 Wernz, *Negotiation Ethics*