



## NEGOTIATION FOR LAWYERS

**Term:** September-October 2005

**Professor:** Aspasia Tsaoussi

**Class Hours:** Monday 5:00-9:00 p.m.

**Office Hours:** Monday 4:00-5:00 p.m., or by appointment

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*"You don't get what you deserve, you get what you negotiate."*

Chester L. Karrass (1970)

### COURSE OBJECTIVES

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The main objective of this course is to help students understand the nature of disputes (conflict) and to expose them to various methods of preventing and resolving disputes (negotiation and mediation). The course also has two secondary goals: (a) to impart a broader intellectual understanding of the negotiation process as an alternative to litigation, and (b) to provide students with basic training in the art of creative problem solving.

The course will address the fundamental theoretical foundations of negotiation, but will focus more heavily on the skills, strategies and techniques that are applied in practice for effective negotiation outcomes. Such practical interpersonal skills can be particularly helpful for lawyers that can apply them to concrete situations they face in their day-to-day transactions with clients and with other lawyers. Negotiation is essentially a process of communication, trust building, and mutual persuasion. Thus, learning how to negotiate is a valuable tool in everyday legal practice.

### COURSE DESCRIPTION

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The teaching methods that will be employed are lectures, in-class discussions of the assigned readings and current events, as well as the study of particular negotiated cases. The central axis of the course is the role-playing exercises that will take place in class. Students will spend much of their time engaged in these simulated negotiation exercises (as negotiators, third parties, and observers) and will have the opportunity to review and critically evaluate what worked, what did not, and why.

The success of the role-playing exercises will depend (largely if not entirely) on the students' full participation and involvement. The exercises will provide a "hands on" dimension to the course, offering students interactive, experiential learning in the practical skills and strategies common to group negotiations. By becoming involved in these simulated negotiations, you will acquire a sense of the negotiating environment and will be able to develop basic negotiating skills which will prove helpful in your daily interaction with clients, and in your strategic positioning, both in and outside of court.

## COURSE READINGS

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For the purposes of this course, we will use *a main textbook* and *a reader*.

★ The main textbook will be:

Roger Fisher and William Ury, with Bruce Patton. *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin Books, 2<sup>nd</sup> ed. 1991)

★ The Negotiations Reader will contain both required and optional readings:

- G. Richard Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (New York: Penguin Books, 1999)
- Selected pages from: Leonard L. Riskin and James E. Westbrook, *Dispute Resolution and Lawyers* (St. Paul, MN: West Publishing Co., 2<sup>nd</sup> ed. 1997)
- Optional additional readings (seminal articles on negotiation-related topics that have been published in major journals in recent years)

Since the class meets once a week, it is essential that all students come to class *fully prepared*, having read all the assigned readings. It is equally important that students complete the written assignments, as these are designated in the present syllabus.

## COURSE REQUIREMENTS

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**Participation and Performance in Negotiation Exercises:** The nature of the course makes your in-class participation an essential component of your overall performance. Thus, regular attendance is a prerequisite, not an option. Your involvement in class activities and especially your performance in the role-playing exercises will be duly assessed, representing a total of 30% of your final grade. The result sheets you will submit as a participant in the exercises will be a key component of your performance. But more generally, you will be evaluated on the basis of your critical thinking skills, your ability to develop clear and substantiated arguments, and your negotiating tactics.

**Written Assignment:** You will be required to submit a final paper, which will be a description and analysis of one of the simulated negotiation exercises that have been conducted in class during the course. Your grade on this assignment will count towards 30% of your final grade.

**Final Examination:** The grade you receive in your final exam will comprise 40% of your final grade.

To sum up, your final grade for this course will be based on:

Class Participation	30%
Written Assignment	30%
Final Examination	40%
<b>TOTAL</b>	<b>100%</b>

## COURSE OUTLINE

### CLASS 1 (MONDAY SEPT. 5)

#### COURSE OVERVIEW: AN INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)

##### Discuss

- Why Negotiate? The Shift from “Win-Lose” Outcomes to “All-Gain” Solutions
- The Lawyer as Negotiator
- Better Understanding the Lawyer-Client Relationship
- The Taxonomy of Disputes - Mediation - Arbitration

##### Readings

*Getting to Yes*: Chapter 1

*Bargaining for Advantage*: Chapter 1

*Reader*: Riskin & Westbrook, pp. 1-62

### CLASS 2 (MONDAY SEPT. 12)

#### THE A,B,C'S OF PRINCIPLED NEGOTIATION

##### Discuss

- Learning to negotiate using Fisher and Ury's negotiating method
- Separating the people from the problem
- Focusing on interests, not positions
- Approaching the client: Interviewing and counseling skills

##### Readings

*Getting to Yes*: Chapters 2 and 3 (pp. 15-55)

*Bargaining for Advantage*: Chapters 4 and 5

*Reader*: Riskin & Westbrook, pp. 80-108

##### Assignment

Fill in the Pedro & Doris exercise and submit it on Sept. 19. This landlord/tenant role-play will allow you to separate the relationship from the substance. It will thus help you become better advocates of your clients' interests and will also highlight the importance of building a good working relationship.

### CLASS 3 (MONDAY SEPT. 19)

#### PREPARING TO NEGOTIATE

##### Discuss

- What is distributive bargaining? What is integrative bargaining?
- Basic orientations toward negotiation: Competitive vs. cooperative; adversarial vs. problem-solving; claiming value vs. creating value
- Goals vs. bottom lines: An introduction to Shell's "information-based bargaining"

##### Readings

*Bargaining for Advantage*: Chapter 2

*Reader*: Riskin & Westbrook, pp. 148-155

**CLASS 4 (MONDAY, SEPT. 26)**  
**CLAIMING VALUE (DISTRIBUTIVE BARGAINING)**

**Discuss**

- How to claim value: The tactics and planning of distributive bargaining
- Starting the negotiation dance: Shell's four stages of negotiation
- Pursuing a client's interest: The ethical boundaries

**Exercise**

Negotiate Oil Pricing

**Readings**

*Getting to Yes*: Chapter 3  
*Bargaining for Advantage*: Chapters 7 and 11  
*Reader*: Riskin & Westbrook, pp. 109-137

**CLASS 5 (MONDAY OCT. 3)**  
**CREATING VALUE (INTEGRATIVE BARGAINING)**

**Discuss**

- Debrief Oil Pricing
- Two parties, many issues on the table: Who opens first?
- Making concessions
- Testing for cooperative behavior: The negotiator's dilemma
- What is the Pareto Optimal frontier?

**Exercise**

Negotiate Sally Soprano

**Readings**

*Getting to Yes*: Chapter 4  
*Bargaining for Advantage*: Chapters 8 and 9  
*Reader*: Riskin & Westbrook, pp. 193-206 and 209-223

**Suggestion**

Begin writing your final assignment

**CLASS 6 (MONDAY OCT. 10)**  
**THE IMPORTANCE OF OBJECTIVE CRITERIA**

**Discuss**

- Debrief Sally Soprano
- How to overcome positional bargaining: Inventing options for mutual gain
- Knowing and developing your BATNA
- Authoritative standards and norms
- Direct vs. representative negotiation
- Learning to use decision trees

**Exercise**

Negotiate Appleton vs. Baker

**Readings**

*Getting to Yes*: Chapters 5 and 6 (pp. 81-106)  
*Bargaining for Advantage*: Chapter 3  
 Reader: Riskin & Westbrook, pp. 229-239

**CLASS 7 (MONDAY OCT. 17)****HOW TO BE SUCCESSFUL WHEN THE OTHER SIDE IS MORE POWERFUL****Discuss**

- Debrief Appleton vs. Baker
- Leverage: The power to obtain an agreement on your own terms
- The distinction between actual and assumed power
- Preparing for high-stakes bargaining
- How to close the negotiation process and gain commitment
- Review for the final exam

**Exercise**

Negotiate Powerscreen

**Readings**

*Getting to Yes*: Chapters 7 and 8 (pp. 107-143)  
*Bargaining for Advantage*: Chapters 6 and 10

**Remember!**

Hand in your final assignment

**★ Final Examination (Monday, October 24)**

*Dr. Aspasia Tsaoussi graduated from the Law Faculty of the Aristotle University of Thessaloniki in 1990. Three years later, she obtained her Master's Degree (cum laude) from the same Law Faculty, majoring in Sociology of Law. She continued her graduate studies in the University of Chicago Law School, studying law & economics, legal sociology and feminist jurisprudence. She received her Master of Laws (LL.M.) degree (cum laude) in 1995, and her Ph.D. degree in August of 2000, under the supervision of Prof. Gary S. Becker (Nobel Prize in Economics 1992) and Judge Richard A. Posner (Chief Judge, U.S. 7<sup>th</sup> Court of Appeals). Her research interests focus on sociology of family law, alternative dispute resolution and the law, law and economics, gender discrimination, and economic sociology (more particularly, the creation and change of social norms). She has published widely and has presented her work in many conferences both in Greece and abroad. She is an attorney, a member of the Thessaloniki Bar Association since 1992 and of the American Bar Association since 1994, where she serves on the Committee for Genetic Research and Testing.*