

**UC LAW NEGOTIATION SYLLABUS 2019  
POST FALL BREAK**

**Post Class 6 (Sept. 30):** Students may choose between writing their fourth Analytical Journal Entry on themes, experience, and readings relating to Class 4 (TKI and Bagger Delishco), 5 (Discount Marketplace), or 6 (the video negotiations). (Note that the course memorandum refers to class 4, 6 or 7 - I'm changing that to Class 4, 5, or 6. Please do see the course memorandum for further instructions about journal entries and other submissions.

That FOURTH JOURNAL ENTRY (whatever the Class and topical focus) is due by Monday, October 21. However if you opted to write on the earlier classes, I do encourage you to submit your entry earlier. The sooner you submit it, the sooner I will hand it back with feedback.

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**HEADS UP:** For those students electing to participate in an email negotiation exercise with law students from the University of Saskatchewan as part of your final project: The negotiation will have begun on October 1, **and MUST be completed by the end of the day on October 17. Feedback to your negotiation counterparts (in Saskatchewan) is then due by 5:00 p.m. on October 21. The "transcript" of your email negotiations must be conveyed to the next student on the list (from our class) by 4:30 p.m. day on October 22.** Once you receive the transcript from the student before you on the list, review it and provide feedback to that student before noon on October 26. Final written submissions (to me) about this exercise are due on December 13.

**Second HEADS UP:** Also, please email me ASAP or, at the latest, come to class with the name and contact information of at least one person you've successfully recruited to be a client for the Bio-Con v. Microtex case, if you haven't already. All students will be meeting with clients during the week Nov. 4-8, and then participating in a negotiation with lawyers and clients on both sides, sometime before class on November 18.

**Preparation for Class 7 - October 14, 2019**

**Read:** Confidential Information for MAPO

On TWEN:

7.1 Jeanne M. Brett. "Negotiating Group Decisions." Negotiation Journal (July, 1991): pp. 291-310.

7.2 Irving Janis. Victims of Groupthink. Houghton Mifflin, 1972. pp.8-13, 35-49, 207-24.

7.3 Howard Raiffa. The Art and Science of Negotiation Cambridge, MA: Belknap Press of Harvard University Press, 1982. pp.257-73.

7.4 Scott Plous. “*Group Judgment Decisions.*” The Psychology of Judgment and Decision Making. McGraw Hill, 1993. pp.205-14.

7.5 Michael Doyle and David Straus. How to Make Meetings Work. New York: the Berkley Publishing Group, 1982. pp. 83-124 [This reading is optional for most, but required for the member of any group who would like to serve as facilitator of team meetings, or meetings of both negotiation teams.]

7.6 Richard Birke. “Settlement Psychology: When Decision-Making Processes Fail.” Alternatives 18 (December 2000): p.203.

Do prepare for the MAPO negotiation by thoroughly reviewing and analyzing the facts and the numbers, and considering your approach before you meet with your team. We won’t be doing the MAPO negotiation in class on the 14<sup>th</sup>, but you will have a substantive team meeting.

Prepare your opening words in a significant negotiation – what you would plan to say within the first minute or so. You may choose Settle for More or Less, Marking the Trail, Salon Madness, Kiwi Pharming, or the upcoming MAPO negotiation. Fair warning: we may video-record these.

**Class 7 – October 14, 2019 Lego at the Law School - Who could have guessed? Plus, getting ready to start the real (fake) challenge.**

- Grand Analytical Summary, Video Wrap Up, Q &A
- Let’s Play Lego!
- Focus on Openings
- Turning to Turning Moves and Interventions for High Conflict
- MAPO Team preparation begins

**Note:**

The course memorandum suggested a choice as to whether your fifth journal entry will be on the MAPO negotiation or a different one. In retrospect, I think it should be on the MAPO case (and journal entry #6 will be on Bio-Con v. Microtex, as originally stated). (If someone is “behind” on journal entries, perhaps due to an earlier absence, you could add an entry on the Criminal Plea bargaining case that will come up later in November.

**Post Class:**

**I suggest that you start writing the MAPO Journal entry at least some notes from this preparation phase.** . Note that your this journal entry is likely to be a bit longer and will focus on team vs. team negotiations (on each side of the table as well as across the table), the themes from classes 7 and 8. However, I strongly urge you to begin writing notes NOW regarding your

team deliberation, planning and preparation phase, while they are fresh in your mind.

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**Preparation for Class 8 - October 21, 2019 (Class may go until 7:00 -7:30ish, please plan.)**

Prepare for the MAPO Negotiation – MEET with your team to get ready!

**Read:** In *Negotiation Genius* Text, Chapter 9, “Confronting Lies and Deception,” pp. 196-218.

On TWEN:

8.1 D. Malhotra. “The Fine Art of Making Concessions.” Negotiation (Jan. 2006) 3-5.

8.2 Charles B. Craver, “Collective Bargaining Interactions, at <http://www.negotiations.com/articles/collective-bargaining> (accessed 10/11/2012), under the header: Labor Union Negotiation - Negotiation Expert.

8.3 Internal Revenue Manual-39.2.1 Labor-Management Contract Negotiations.

8.4 Stephen D. Bluen and Vanessa G. Jubiler-Lurie, “Some Consequences of Labor Management Negotiations: Laboratory and Field Studies,” *Journal of Organizational Behavior*, Vol. 11, No. 2 (March 1990) pp. 105-118.

*Optional, but required for students assigned to facilitate group meetings or negotiations:*

8.5 Roger M. Schwarz. The Skilled Facilitator. Jossey Bass: John Wiley and Sons, 1994. pp. 67-88.

Also, please review the Doyle and Straus article on facilitation, referenced in preparation for Class 8. Instructor’s note: I have the full Straus and Doyle book in my office and am willing to lend it to interested students.

For those participating in the email negotiation with law students from the University of Saskatchewan: remember that your feedback on the negotiation is due to your Saskatchewan counterparts by 5:00 p.m. on October 21. And you should send the email transcript of your negotiations to the next UC Law student on the list by 4:30 on October 22. Your Review and feedback on the email transcript you will have received from the student just before you on the list is due by noon on October 26.

**Class 8 – October 21, 2019 - A Team of Hard-Nosed Problems**

**Class time will be extended until 7:30ish for immediate debriefing. We will have two GREAT GUESTS to “coach” during the negotiation, and talk about what works and what doesn’t in real labor management negotiations when we are done. And there will be pizza!**

- Negotiate MAPO to conclusion!
- Remember that some negotiations will be videotaped!
- We will have GREAT negotiation coaches for this exercise, who will also brief us on realities of labor management negotiations.

Post Class: DO write your 6<sup>th</sup> Analytical Journal entry, a/k/a the MAPO entry (covering classes 7 and 8, the negotiation experience, themes, readings, and class discussion.)

**Post Class:** Assuming that we videotaped and they are likely to be of interest: Review MAPO videotape: I may ask you to select clips for class “consumption” on October 28. If so, I’ll ask you for a short summary of your clips by noon that day.

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### **Preparation for Class 9 – October 28, 2019**

#### **Power, Emotion, Tough Stuff and Performance**

**Read:** *Negotiation Genius* Text, Chapter 11, “Negotiating from a Position of Weakness,” and Chapter 12, “When Negotiations Get Ugly.”

On TWEN

9.1 “Think you’re powerless? Think again.” Negotiation Vol. 12; 2 (Feb. 2009) 1-3.

9.2 “Can’t beat them? Then join a coalition.” Negotiation Vol. 12; 3 (March 2009) 1-4.

9.3 Aaron, “Emotional Effects and Affecting Emotion,” Chapter 4 in *Client Science: Advice for Lawyers on Counseling Clients through Bad News and Other Legal Realities* (Oxford University Press 2012). [This is in a client counseling context, but it’s the most efficient way to convey information about the “emotional core concerns,” first written about by Dan Shapiro and Roger Fisher, in a negotiation context, their book: *Beyond Reason: Using Emotions As You Negotiate* (Penguin 2006).]

9.4 Kathleen McGinn, Elizabeth Long Lingo, and Karin Ciano. “Transitions through Out of Keeping Acts.” Negotiation Journal (April 2004): pp171-184.

Start to review the Confidential Information for *Bio-Con v. Microtex*, our “real” business client negotiation exercise, just in case you have any questions.

I strongly urge you to contact your assigned client, introduce yourself, and set up a time to for your lawyer-client meeting (sometime during the week of Nov. 4-8), and also ask your client about his or her availability for the four-way negotiation session sometime between November 9 and November 17. You should communicate with your opposing counsel about their availability for that final negotiation.

Class 9 – October 28, 2019 - **Power, Emotion, Tough Stuff and Performance**

- Working with differences in power; sources of power
- Handling high emotion
- Psychology and interventions that matter

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**Preparation for Class 10 –November 4, 2019**

**Read:** On TWEN:

**10.1** Wayne Brazil, “Professionalism and Misguided Negotiating,” ch. 78, pp. 687-697, in *The Fieldbook*, but copied into *The Reader* and on TWEN.

**10.2** Russell Korobkin, *The Role of Law in Settlement*, ch. 17, pp. 254-276 in *The Handbook* but copied into the *Reader* and on TWEN).

**10.3** *The Fish and Dragonfly Exercise*- excerpted by Mary Thompson from Marla Del Collins. “Transcending Dualistic Thinking in Conflict Resolution.” *Negotiation Journal* (April 2005): pp.263-80.

**10.4** (a) Your choice:

M. Aaron, *Client Science: Advice for Lawyers on Initial Client Interviews*, Clientsciencecourse.com, 2013.

OR

**10.4** (b) ALI-ABA. “Client Interviewing.” in *Skills and Ethics in the Practice of Law*, American Law Institute-American Bar Association, 1993: pp. 3-13.

**10.5** Scott Plous. *The Psychology of Judgment and Decision Making* McGraw Hill, 1996. pp. 64-76.

**Read & prepare:** assigned lawyer & client role information for the *Pure Past* case. We will prepare clients and negotiate this case in class on November 4.

**For Bio-Con v. Microtex, Inc.:**

Lawyers must do research and preparation necessary for successful “real fake” negotiations in *Bio-Con v. Microtex*. **THIS WEEK** (week of Nov. 4-8), lawyers and clients must meet to prepare for that negotiation. Have your client complete his or her case evaluation as soon after your client meeting as possible, and you should complete your case evaluation as well. These should be handed in to the Fourth Floor Faculty Assistant, as soon as possible, and absolutely prior to your negotiation, which will take

place sometime during between November 9 and November 17.

**Class 10 –November 4, 2019 –Negotiating Settlement with Clients and Opposing Counsel  
With esteemed Guest Faculty: David Croall, Esq. Porter Wright**

- Negotiating with and on behalf of clients
- Fundamentals of dispute resolution for lawyers with clients, but without mediators
- Practice and demonstration in the *Pure Past* case.

**Post Class:** Start writing Analytical Journal entry #6 – at least notes. Your experience with and reflections upon client preparation and negotiation in the Pure Past dispute settlement context and, more importantly, Bio-Con Microtex, will be combined into one longer journal entry (at least 5-6 pages). However, I strongly suggest you record notes now of your in-class experience (and related readings) with Pure Past and in your preparation meetings with Bio-Con/Microtex.

**Preparation for CLIENT NEGOTIATION EXERCISE (meets during class week 11)**

**Read on TWEN:**

11.1 M. Watkins. “Dynamic Negotiation: Seven Propositions About Complex Negotiations.” Business Fundamentals As Taught at the Harvard Business School: Negotiation. Harvard Business School Publishing, 2001. pp.119-136.

11.2 H. Movius and T. Wilson, “How We Feel about the Deal,” Negotiation Journal, Volume 27, issue 2 (April 2011), p. 241-250  
[http://journals.ohiolink.edu.proxy.libraries.uc.edu/ejc/pdf.cgi/Movius\\_Hallam.pdf?issn=07484526&issue=v27i0002&article=241\\_hwfatd](http://journals.ohiolink.edu.proxy.libraries.uc.edu/ejc/pdf.cgi/Movius_Hallam.pdf?issn=07484526&issue=v27i0002&article=241_hwfatd)

**Class 11 - Week of November 11-15, 2019 - REAL CLIENT NEGOTIATION EXERCISE**

**BEFORE YOUR NEGOTIATION**

Remember: Fill out and hand in case assessment form for Bio-Con v. Microtex (and collect and hand in your client’s form) BEFORE you start negotiating.

THERE WILL BE NO IN-CLASS meeting, though you may (and are encouraged to) use the class meeting to negotiate the Real Client Negotiation Exercise. These negotiations should, if at all possible, be concluded by Sunday evening, November 17. (Note: If client schedules require additional flexibility, I will extend the ABSOLUTE deadline for finishing is before our class on Monday, November 18.)

**AFTER YOUR NEGOTIATION: EMAIL YOUR RESULTS, INCLUDING ANY SETTLEMENT AGREEMENT TO PROFESSOR AARON ASAP!** If you did not negotiate to a

settlement, please write up a brief description of the last offer and counter offer at which your negotiations ended. If you did, please DO draft formal settlement language and have the document signed by your clients. If signatures are not logistically possible, you can give me a copy of the email approval by your clients.

### **Class 12 –November 18, 2019 - Keeping it Real and Negotiating Contract Language**

- Debrief Real Client Negotiation Exercise
- Examine Process Options
- The REAL Arbitration Results
- Negotiate Settlement Agreements
- Negotiation Ethics

**Post Class:** Write combined Journal Entry #6 on legal dispute settlement negotiations, focusing on Bio-Con v. Microtex, client work, class discussions, reading, etc., and reflecting back to Pure Past, if helpful

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**Note: Our class topics and practice exercises just before and then right after Thanksgiving are very much subject to negotiation among the class members and with the prof. We could take in several directions: gender, media platforms, negotiating with a neutral... you name it. And we should probably address challenges in negotiation ethics. Thus, what's in the syllabus now should be seen as suggestions, not limits. I am confident will come up with far too many ways to use our time constructively.**

### **Preparation for Class 13 – November 25, 2019**

**Read** on TWEN:

13.1 Cynthia Alkon. "Plea Bargaining: An Example of Negotiating with Constraints." *The Negotiator's Desk Reference, Volume 1*, edited by C. Honeyman and A.K. Schneider, Saint Paul, Minnesota : DRI Press, 2017, pp. 683-701.

Read your assigned roles in the plea bargaining case (handed out in last class)

### **Class 13 – November 25, 2019 - Plea Bargaining!!!**

- Negotiate Touching Tennis Tales
- Negotiate People v. Adams
- Criminal Context – Constraints & Obligations

### **Preparation for Class 14 –December 2, 2019**

**Read** on TWEN:

14.1 Edward DeBono. Parallel Thinking: From Socratic to DeBono Thinking 2d edition. Penguin Books, 1995. pp.25-35, 117-29.

14.2 Additional Reading TBA, depending on consensus re last session topics.

### **Class 14 –December 2, 2019**

- Negotiation Practice In the Moment and In Real Time to the End of Our Time
- More Specifics To Be Negotiated and TBA

**DO REMEMBER TO ANNOTATE ALL JOURNAL ENTRIES FROM THE SEMESTER, AS APPROPRIATE. ALSO, REMEMBER THAT SUCCESSFUL JOURNALS WILL DISCUSS AND INTEGRATE COURSE READINGS, as stated in the course memorandum.**

As you prepare and annotate your final journals, you might want to read a few of my favorites in Moffitt and Bordone, eds., *The Handbook of Dispute Resolution* (Jossey Bas, 2005): Sheila Heen and John Richardson, “I see a Pattern Here and the Pattern is You”: Personality and Dispute Resolution, ch. 3, pp. 35-51.

Keith Allred, *Relationship Dynamics in Disputes: Replacing Contention with Cooperation*, ch. 6., pp. 83-98.

Clark Freshman, *Identity, Beliefs, Emotion, and Negotiation Success*, ch. 7, pp. 99-117.

Douglas Stone and Sheila Heen: *Bone Chips to Dinosaurs: Perceptions, Stories, and Conflict*, ch. 10, pp. 150 – 170.

*Final Annotated Journals are due to Professor Aaron by 5:00 p.m. on Friday, December 7. All other Final Project Submissions are due by 5:00 p.m. on Friday, December 14. Please hand into the Faculty Assistant on the Fourth Floor. You should use your name, NOT a student number.*

**\*\*IF YOU HAVE NOT YET PAID YOUR COURSE FEE, YOU MUST TURN IT IN WITH YOUR JOURNAL.**



The Faculty Senate passed a resolution requesting that all faculty include the following information about mental health services and Title IX anti-discrimination policies on our syllabi:

### **Counseling Services, Clifton Campus**

Students have access to counseling and mental health care through the University Health Services (UHS), which can provide both psychotherapy and psychiatric services. In addition, Counseling and Psychological Services (CAPS) can provide professional counseling upon request; students may receive five free counseling sessions through CAPS without insurance. Students are encouraged to seek assistance for anxiety, depression, trauma/assault, adjustment to college life, interpersonal/relational difficulty, sexuality, family conflict, grief and loss, disordered eating and body image, alcohol and substance abuse, anger management, identity development and issues related to diversity, concerns associated with sexual orientation and spirituality concerns, as well as any other issue of concerns. After hours, students may call UHS at 513-556-2564 or CAPS Cares at 513-556-0648. For urgent physician consultation after-hours students may call 513-584-7777.

### **Counseling Services, Blue Ash Campus**

UC Blue Ash Counseling Services provides high quality integrated health, counseling, and wellness services. **Mental Health and personal counseling services are free of charge to students who are matriculated as UC Blue Ash College students.** Services address student needs such as self-esteem, family conflict, loss and grief issues, adjusting to life's challenges, relationship problems, eating disorders, physical and/or emotional abuse, and domestic violence. Students who want an initial meeting with a counselor can call (513) 745-5670 or stop by Room 140 Muntz Hall to schedule an appointment. If after hours, please call CAPS Cares (main campus) using the 24 Hour Phone Consultation Line at 513-556-0648.

### **Counseling Services, Clermont Campus**

The Compass Counseling Center provides students assistance in helping to deal with life's stressors and adjustment to college life. **All services provided to UC Clermont students are free and confidential.** Some of the most common issues addressed at the center include transition to college life, stress from home, classroom performance, depression, anxiety, relationship problems, grief and loss, and substance abuse. Students are welcome and encouraged to walk into the Compass Counseling Center located in the Student Services Building, Room 201. Students may contact the office by calling (513) 732-5263. If after hours, please call CAPS Cares (main campus) using the 24 Hour Phone Consultation Line at 513-556-0648.

### **Title IX**

Title IX is a federal civil rights law that prohibits discrimination on the basis of your actual or perceived sex, gender, gender identity, gender expression, or sexual orientation. Title IX also covers sexual violence, dating or domestic violence, and stalking. If you disclose a Title IX issue to me, I am required forward that information to the Title IX Office. They will follow up with you about how the University can take steps to address the impact on you and the community and make you aware of your rights and resources. [Their priority is to make sure you are safe and successful here.](#) You are not required to talk with the Title IX Office. [If you would like to make a report of sex or gender-based discrimination, harassment or violence, or if you would like to know more about your rights and resources on campus, you can consult the website \[www.uc.edu/titleix\]\(http://www.uc.edu/titleix\) or contact the office at 556-3349.](#)