

Negotiation Theory and Practice

Course Syllabus

Prof. Thomas J. Stipanowich

**William H. Webster Chair in Dispute Resolution & Professor of Law,
Pepperdine University School of Law**

**Associate Dean, [Dean for] The Straus Institute for Dispute Resolution
310-506-4655**

thomas.stipanowich@pepperdine.edu

About Negotiation Theory and Practice

National commissions considering what people expect from lawyers have repeatedly underlined the critical importance of NEGOTIATION SKILLS. Most lawyers never learn the rudiments of negotiation theory and practice, and therefore miss many opportunities for their clients. Through this course you will obtain insights and learn basic skills that are essential to practice and to all aspects of human interaction.

Through a series of exercises designed to model real-world situations, this highly interactive course examines the theory and practice of negotiation as a process used to put deals together or to resolve disputes and legal claims. Discussion is organized around a series of readings, problems and questions, as well as role-plays highlighting various negotiation dynamics.

During this course...

- You will become aware of a number of factors that play a key role in negotiations: human perceptions, concepts of fairness, psychological “traps,” and emotions.
- You will learn about competitive positional bargaining and integrative or cooperative problem solving, and acquire insight into the strategic management of the tension between the two approaches.
- Through simulated exercises, you will begin develop skills and confidence as negotiators. You will experience all stages of the negotiation process, from opening moves to resolution or impasse.
- You will study and apply different strategies and tactics in negotiation, and how to prepare for a negotiation.
- You will confront the dynamics of the attorney-client relationship, and consider sometimes competing ethical standards and principles.
- You will experience the dynamics of multi-party negotiation and negotiation using electronic media.

Required Text and Other Reading Materials

- **REQUIRED TEXT:** Folberg & Golann, *LAWYER NEGOTIATION: THEORY, PRACTICE & LAW* (Aspen Publishers, 4th ed.)
[Required readings for the course will come from this book]
- **SUPPLEMENTARY SOURCE:** Malhotra & Bazerman, *NEGOTIATION GENIUS* (2007)
[Recommended readings from this very useful “handbook” on negotiation will be provided alongside required readings from the required text. I strongly recommend this book!]

Grading

Your grade for this course will be based on the following:

- Class Participation, including reflection papers (journals) on class discussions and exercises (25%)
- Final Paper (75%)

Please be aware that for the sake of efficiency I will ask you to put your names, and NOT exam numbers, for submissions in this class, except for the final paper. The final paper will be graded anonymously.

***CLASS PARTICIPATION and REFLECTION PAPER(S)**

Twenty-five percent (25%) of your grade will be based on your class participation. Therefore it will be very important for you to be fully prepared (that is, do the readings and problems) and engaged in the class discussion and exercises. I keep track of your class participation and expect everyone to have read the assignment and be prepared to discuss the readings and problems and participate in exercises. If you are unable to be present for part of a class, (1) please inform me beforehand in writing and (2) remember that it is YOUR responsibility to obtain information about class discussion and any assignments. An important part of your class participation will be the submission of a journal in which you include reflections on class discussions and exercises. The journal will be due the week following the class (details to follow).

***FINAL PAPER**

Seventy-five percent (75%) of your grade will be based on a final paper of **NO MORE THAN 20 pages** (12-point font, 1.5-spacing, 1 inch margins). You will be asked to prepare a paper on a subject relevant to the coverage of the course, which includes many different subjects and areas of interest! A list of potential paper topics will be distributed, and further guidance regarding the paper will be provided.

***NOTE ON TURNITIN**

This course requires the electronic submission of the final papers through the plagiarism detection device known as Turnitin (<http://www.turnitin.com>). Turnitin conducts textual similarity reviews of submitted papers. When papers are submitted to Turnitin, the service retains a copy of the submitted work for the purpose of detecting plagiarism

in future submitted work. The use of Turnitin is subject to the Terms of Use agreement posted on the Turnitin.com website.

Office hours – Please come see me to talk about the course or other matters!

My Straus Institute office is Room 120B in the Straus Institute Suite on the first floor of the School of Law; my law faculty office (much quieter) is on the third floor, Room 382. I do not have regular office hours but I am at the School of Law most of the time and am available to meet by appointment. In fact, meeting with and counseling students is the most important thing that I do outside the classroom, so please know you are invited!

Disability Statement

Any student with a documented disability (physical, learning, or psychological) needing academic accommodations should contact the Disability Services Office (Malibu Campus, Tyler Campus Center 264, 310.506.6500) as early in the semester as possible. All discussions will remain confidential. Please visit <http://www.pepperdine.edu/disabilityservices/> for additional information.

Other General Information

Institutional Learning Outcomes

The mission of Pepperdine University is to strengthen students for lives of purpose, service and leadership. The values expressed in this mission are reflected in Pepperdine's commitment to several student Institutional Learning Outcomes: knowledge/scholarship, faith/heritage and community/global understanding. School of Law Program Learning Outcomes and course Student Learning Outcomes should advance the Pepperdine mission and the University Institutional Learning Outcomes.

Program Learning Outcomes

- Students will demonstrate proficiency in legal analysis and critical reasoning. (Cognitive Apprenticeship (CA 2))
- Students will demonstrate proficiency in legal research and in written and oral communication. (Professional Lawyering Skills (LS 1))
- Students will demonstrate professional lawyering skills. (Professional Lawyering Skills (LS2))
- Students will demonstrate knowledge and understanding of a lawyer's moral, ethical, and professional responsibilities. (Moral, Ethical, and Professional Identity Apprenticeship (ME 1))

Student Learning Outcomes

- Analyzes theories of and demonstrate an understanding of the practical skills of negotiation by preparing a substantive research paper. (CA2, LS1)
- Develop and practice negotiating skills by engaging in simulated exercises and in multi-party negotiations. (LS2)
- Show an awareness of ethical rules and informal constraints regulating the conduct of lawyers and negotiators in certain settings (ME 1).

Negotiation Theory & Practice

Professor Stipanowich

Course Schedule

Note: Be sure to review and be prepared to answer questions or problems contained in sections of required reading in the text (Folberg & Golann, *LAWYER NEGOTIATION*, 3RD ED. 2016). I highly recommend that you also do supplemental reading in the Malhotra and Bazerman book, *NEGOTIATION GENIUS* (2007).

TUESDAY, August 27 (1:40-5:40 pm)

Introduction to the Course; Negotiation: Decision-Making and Uncertainty

Required reading: Folberg & Golann, *LAWYER NEGOTIATION* (LAWYER) Chapter 1, 1-6; Chapter 3, 31-38

Suggested supplemental reading: Malhotra and Bazerman, *NEGOTIATION GENIUS* (GENIUS) 1-49

Prisoner's Dilemma

Win as Much as You Can!

Positional or Competitive/Adversarial Bargaining

Lamb's Golf Negotiation

TUESDAY, Sept. 3 (1:40-5:40 pm)

Interest-based/Cooperative/Problem Solving Approaches

Required reading: *LAWYER*, Chapter 3, 39-52, Chapter 4, 53-70

Suggested reading: *GENIUS*, 50-102

Mrs. Appleby Exercise

Krueger v. M.I.T. Exercise

Executive Seminar Negotiation Video

TUESDAY, Sept. 10 (1:40-5:40 pm)

Interest-based/Cooperative/Problem Solving Approaches (continued)

Golden State Savings & Loan v. Computec Negotiation

Perception, Fairness and Psychological Factors in Bargaining

Required reading: LAWYER Chapter 2, 11-24

Suggested reading: GENIUS, 105-155, 159-176

Exercises

Preparing for Negotiation, Exchanging and Refining Information, Opening Offers

Required reading: LAWYER Chapter 5, 71-99

Suggested reading: GENIUS, 15-42 (preparing for negotiation, obtaining info, opening offers), 83-102 (“investigative negotiation”), 177-195 (“blind spots in negotiation”)

Exercise

TUESDAY, SEPT. 17 (1:40-5:40 pm)

Preparation for Negotiation, Power and Leverage, Communication, Opening Offers, Negotiation Concession Strategy; Trade-offs

Required reading: LAWYER Chapter 6, 101-105

Suggested reading: GENIUS, 42-49

Opera Negotiation Exercise

Video Comparing Approaches to Negotiation

TUESDAY, SEPT. 24 (1:40-5:40 pm)

Threats and Ultimatums, Decision Trees

Required reading: LAWYER Chapter 6, 108-125

Suggested reading: GENIUS, 19-24 (BATNA), 236-255 (dealing from position of weakness), 273-279 (threats and ultimatums)

Decision Tree Exercise

Overcoming Impasse; Finalizing Agreement

Required reading: LAWYER Chapter 7, 127-151

Suggested reading: GENIUS, 69-70 (contingency contract) 85-86 (asking questions), reconciling interests (86-88)

Independent Immunities Negotiation Exercise

SATURDAY, SEPT. 28 (8:30 am-5:30 pm)

Telephone and Cyber Negotiations

Required reading: LAWYER Chapter 8, 153-176

Gender, Culture and Race

Required reading: LAWYER Chapter 98, 177-196

Newtonian Negotiation Exercise

The Role of Emotions and Emotional Intelligence

Required reading: LAWYER Chapter 2, 25-29

Jeremy Lack, "Applying Neurobiology to Conflict" (Handout)

Suggested reading: GENIUS Chapter 12, 257-279

Confronting Lies and Deception; Negotiation Ethics

Required reading: LAWYER Chapter 10, 197-220

Suggested reading: GENIUS, 196-235

Nyquist Negotiation Exercise

Multiparty Disputes, Coalitions

Required reading: LAWYER Chapter 6, 105-108

Suggested reading: GENIUS, 249-251

Final Negotiation Exercise

NOTE: FINAL COURSE PAPER DUE BY ANY TIME ON MONDAY, OCT. 14.