

LAW 712, NEGOTIATION
University of Michigan Law School, Winter 2009
DRAFT SYLLABUS Ver. 2.1, December 23, 2008

Class Schedule: Monday Thursday, 11:15 – 12:40, Hutchins Hall 132

Prof. Ted Parson

Hutchins Hall 432

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Office hours: Tuesday 9:30 – 11:00 (plus Mon 2:30 – 3:30 at SNRE, Dana 3548)

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Enrollment limit for Winter 2009: 48

I. Course Objectives

This course offers an introduction to the analysis and practice of negotiations, through a mixture of three roughly equal pedagogical components:

- Presentation of theoretical concepts useful for analyzing negotiation situations
- Case discussion of past negotiations
- Participation in, and subsequent analysis of, simulated negotiation exercises.

The course goal is to enhance your effectiveness as a negotiator, defined as your ability to identify and advance your goals – on average – across the range of negotiation situations and counterparts you are likely to encounter in life, professional and otherwise.

We pursue this goal principally through building your abilities of perception and analysis, to make you better able to recognize when you are engaged in a negotiation (it is not always obvious, and the participants do not always agree!), what the most important elements of its structure are – e.g., parties to the negotiation and issues to be decided, the configuration of parties' interests and their alternatives to a negotiated agreement, information, uncertainty, time, and ongoing relationships – and the implications of these structural elements for tactics: those likely to be employed, those likely to be effective, and associated risks.

There will be some consideration of behavioral and communicative aspects of negotiations – e.g., relevant attitudes, behavioral proclivities, skills of communication, assertiveness, building rapport and empathy – but this will be secondary to our treatment of structural and strategic aspects of negotiations and associated skills of analysis. In this domain we will seek a few “low-hanging fruit” insights: recognition of the salient dimensions relevant to negotiation behavior and outcomes on which people differ; some

progress in recognizing your own dispositions; and recognizing some of the opportunities and risks, specific to particular negotiation situations or partners, that these may carry.

We will also discuss ethical issues that arise in negotiations – both in reality and in course exercises – in order to sharpen your ethical judgments about tactics, outcomes, and externalities in negotiations.

II. Content and Organization

The course builds cumulatively from simple to complex negotiations. Structured negotiation exercises are used to isolate and emphasize specific analytic points. Cases and readings put the analytic points together, and should help you develop intuition about real negotiation situations. Within this structure, the course develops two related analytic themes, which are explored in negotiations ranging from two-party, single-issue, one-time negotiations to complex multi-party, multi-issue negotiations that evolve over time.

Claiming Value

This theme concerns bargains that are principally competitive, in which each party's main concern is to enlarge his or her share of a basically fixed pie. We will discuss tactics used in such bargains and the principles behind them. We will pay special attention to negotiations in which escalating conflict can obscure the value of agreement, and tactics to blunt such escalation.

Creating and Claiming Value

In most negotiations, parties can enlarge the pie as well as dividing it; they can cooperate to find agreements that benefit both. There is a tension between creating and claiming value, though, for negotiators have incentives to increase their own share whatever level of joint gains is created. This tension between cooperative moves to create value and competitive moves to claim it is fundamental to negotiation, and affects virtually all tactical and strategic choice. We will explore individual and joint means to manage this tension constructively.

III. Negotiation Exercises

Basic Rules and Responsibilities

The course will include from eight to ten simulated negotiation exercises. Most weeks, you will be assigned a role, paired with one or more partners, given instructions (often including confidential information), and asked to prepare and carry out a negotiation. The schedule for completing the exercises will vary with their length, complexity, and number of parties. Some negotiations will be conducted during class time; for others, you will be responsible for finding a time outside class to meet and negotiate with your partner(s).

These exercises are the most important learning device in the course. To get the most value from the course, it is essential – for your learning and that of your classmates – that you prepare for the exercises, carry them out with seriousness and attention, and be ready to share your experience and insights with the class.

When exercises include confidential instructions, *do not show the confidential instructions to others*. The operative word here is “show”: you may discuss their

contents, or even tell others what they say — indeed, communicating your interests clearly is essential to effective negotiation — but you must not show your actual instruction sheets. This rule seeks to increase the realism of the exercises, since it is not possible in real negotiations to reveal your underlying values authoritatively.

When exercises include specific instructions for how they are to be conducted, ***follow the instructions precisely***. For example, one exercise specifies that you and your partner make simultaneous offers, without discussion, one round at a time, for 20 rounds. Do not in this case, as a student once did, give your partner a bundle of offers for all 20 rounds and then leave. If the instructions specify the issues to be negotiated, ***do not invent new ones***, as this will only distract from the intended focus of the exercise.

Though most of the negotiation exercises are extreme simplifications of reality, they are intended to isolate and illuminate specific elements that do arise in real negotiations. You should take the exercises seriously, prepare carefully, and participate energetically. When an exercise has a fixed numerical scoring system, you should take the scores as representative of your true interests and try to do as well as you can, subject to whatever considerations of responsibility and ethics you would expect to influence your behavior in a similar real negotiation. For unscored exercises, you should think hard about what you would care about, and what tradeoffs you would be willing to make, in the specified situation.

Timing and Logistics

A sheet will be circulated in the class prior to each negotiation exercise, for you to sign and confirm your participation. (Missing any exercise will affect your grade, but it is much worse to miss one without notice and leave your partners hanging.)

For each negotiation exercise, role and partner assignments will be posted on the course web page, usually immediately after the preceding class. Confidential instructions will be available to pick up between 8:00 AM and 3:00 PM from my secretary, Laura Harlow, in Hutchins Hall Rm. 405 (763-0957, harlowl@umich.edu).

A few exercises have strict time limits, which you must observe. For those that do not, it is up to you to decide how, and how long, to negotiate. For these we will provide guidelines on how long is typically required to prepare, and to carry out the exercise. While groups vary substantially in how long it takes them to complete an exercise, you should still note these carefully, as the exercises vary greatly in complexity and expected time required. For every exercise, you must complete the negotiation and hand in your results by the deadline.

Sometimes time is reserved for part or all of a negotiation exercise to be conducted in class. For others — or for certain complex exercises, if you are unable to complete the exercise in the allotted class time — you and your partner(s) are responsible for finding a mutually acceptable time and place to complete the exercise outside class. In some cases when it is not possible to meet in person, negotiations can be carried out by phone, fax, or e-mail. In any case, you are all responsible for arranging to complete the exercise and submitting your agreements by the deadline, which will be stated for each exercise.

Considerations of Honor

It is easy to defeat the purpose of these exercises, and uninteresting. You could, for example, ask others how they have played an exercise before you do it. You and your partner could collude to break the rules of an exercise. You could seek out published accounts of a few of the exercises to gain an advantage over your partner. You could consult students who have done the exercise in previous negotiation courses. Though it is rare, people occasionally try these tricks. Don't. They devalue your own experience, spoil the exercises for other students, and deaden discussion.

IV. Books and Readings

There are two required textbooks.

G. Richard Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People*. Second Edition, Penguin, 2006.

(You should read this book in its entirety over the first two weeks of the course. We will refer back to it at various points through the semester.)

Robert H. Mnookin, Scott R. Peppet, Andrew S. Tulumello, "Beyond Winning: Negotiation to Create Value in Deals and Disputes". Harvard University Press, 2000.

Other required readings will be distributed in reading Pckts, and via the course Ctools site.

There are also three optional, recommended books. These are widely available (including many used copies available cheap at abebooks.com or other used-book sites). If any reading from these is required, it will be included in a course Pckt.

R. Cialdini, *Influence: the Psychology of Persuasion*. Collins, 2007. (a fun discussion of psychological principles of influence, with obvious applications to negotiations)

D.A. Lax and J. Sebenius, *The Manager as Negotiator* (New York: Free Press, 1986);

W.L. Ury, *Getting Past No* (New York: Bantam Books, 1991).

V. Course Requirements and Grading

Your course grade will be calculated from four components:

1. Participation: 30%

Negotiation is a collective activity, and so is learning about it. Your classmates' learning in this course will depend not just on their inputs and mine, but also on yours. Consequently, you are expected to attend, prepare for, and participate seriously in all the requirements of the course. The participation grade includes the following components:

- Attending all classes and completing all exercises;
- Well prepared, effective contribution to class discussion and exercises: you will be evaluated by me and your peers for how much you contribute to their learning.
- Providing effective, constructively critical feedback to your negotiating partners. (detail on this requirement is provided below, under "short written work")

2. Short written work: 30%

You must submit short papers (2 - 3 double-spaced pages) after *two* negotiation exercises. These should synthesize and reflect on your experience in the exercise (and outside experience as relevant), and on related class discussion and readings. Point form is fine, as long as your thoughts are clearly understandable. These must be submitted *both* in print and electronic form. They are due (print copy to my office, Hutchins Hall 432) by 5:00 PM on the Friday following the class in which the negotiation is discussed.

These papers are vehicles for you to synthesize, cumulatively, the lessons you want to retain from your experience. As such, there is no single model. One useful way to think about them is to identify the most valuable lessons you would want to review before undertaking a similar negotiation in the future. Because these are short, you must be selective. These should *NOT* be mechanical repetitions of material from class or readings, or "blow-by-blow" accounts of your negotiation without assessment or insight.

In deciding what to include in these assignments, you should consider the following:

- a) Aspects of your preparation or negotiating with which you were pleased or displeased, and how you would now approach such situations differently;
- b) Unexpected approaches by others that you saw in your negotiation or learned of in class discussion or conversations, and how you might deal with them, and;
- c) Concepts from class or readings that seem helpful in understanding this negotiation.

You may choose for which exercises to submit these papers, but you must meet the deadline for any exercise you choose. *NOTE:* this means you may not decide to write on an exercise several weeks later, after you have done others and decided retrospectively how interesting the early one was.

These short papers will usually be posted on Ctools. If you wish to not have your paper posted, simply write "*Do not post*" at the top of the first page. I will always observe these requests. (I may also choose not to post a paper at my own discretion.)

You should review the papers posted after each negotiation exercise, for two reasons. First, reading other people's reflections on their experience in an exercise that you also did can help enrich your understanding of your own experience. Second, reading these will be helpful to you in providing feedback to your classmates on their own conduct in the negotiation exercises.

In addition, you are required to provide brief (1-page), written feedback to your partner or partners *in two exercises*, including both commendation and constructive criticism. You are also encouraged to request feedback from your partners, and to provide it beyond the two times that are required – especially after exercises that you found particularly challenging. When you send a required feedback note, please send me a copy. (This is simply for me to verify that you have met the requirement. I will not comment on these.) Feedback notes will usually be kept private. In occasional cases where I think the points discussed are of substantial pedagogical value for the class, I may ask your permission to post a feedback note, but I will never post a feedback note without the permission of both the writer and recipient.

3. Medium-length written work: 25%

A paper (10 - 15 double-spaced pages) analyzing a real negotiation *will be due Wednesday, April 16 at 5 PM*. The negotiation you choose to analyze can be from your professional or personal experience, one for which a public record exists, or (for the ambitious), one that you document through original research.

The paper should succinctly state the facts of the negotiation. Then, drawing on analytic concepts developed in the course, it should offer analysis (why things happened as they did) and possibly prescription (how some parties could have approached the negotiation differently to obtain a preferable result).

As an alternative to this paper, you may develop an original, scored negotiation exercise (one that you would regard as pedagogically useful in this course), including roles, instructions, and teaching note. This alternative form of the assignment is usually more fun than the normal paper assignment, and substantially more challenging. This alternative is only allowed by specific proposal, and subject to my approval.

4. Results of scored negotiation exercises: 15%

Your results on negotiation exercises will be converted to a standardized score showing how well you did relative to others in the same role. Note carefully how this scoring system works. You are not competing against your negotiating partners, but rather against others playing the same role as you. This removes any effect that might be present from some roles being more difficult or less advantageous than others.

If you are interested in the technical details, here they are: The calculation of the standardized score will be similar to the calculation of a standard-normal random variable. If your result is equal to the mean (average) score achieved by all people playing the same role, you receive a score of 0. If your result lies one standard deviation above the mean for that role, your score is +1; one standard deviation below the mean gives you a score of -1; and so on. These standardized scores will be summed across all scored negotiation exercises, with each exercise receiving equal weight.

Interim results on these scores will be made available once over the course of the semester. Your summed negotiation results at the end of the semester will be mapped onto a numerical score to generate this 15% component of your course grade.

VI: Detailed Schedule of Classes, Readings, Exercises:
(Ver. 2.1, 23 December 2008)

Before First Class Meeting:

- Pick up and prepare assigned role for Mapletek-IS negotiation.
- Read Shell, “Bargaining for Advantage” over the first two weeks of class.

Thursday, January 15: Negotiation Exercise #1: Mapletek-Integrated Systems

Class format: Conduct negotiation exercise in class (administered by Senior Judges); submit result reports by end of class.

Monday, January 19: Martin Luther King Day observed — NO CLASS

Thursday, January 22: Intro to Negotiations – Purely Distributive Negotiations

Class format: lecture/discussion of basic negotiation concepts and Mapletek/IS.

Preparation: Reflect on Mapletek negotiation, and read:

(Ctools/Pckt 1) Howard Raiffa, *The Art and Science of Negotiation*, Chapter 1

(Ctools/Pckt 1) Wriggins, W.H., “Up for Auction: Malta Bargains with Great Britain, 1971,” from *The Fifty Percent Solution*, I.W. Zartman, Ed. (Doubleday, 1976).

(Ctools/Pckt 1) Thomas C. Schelling, pp. 21-46 of Ch. 2, *The Strategy of Conflict*

(Ctools/Pckt 1) *Optional:* Ian Ayres and P. Siegelman “Race and Gender Discrimination in Bargaining for a New Car,” *Amer. Econ. Rvw.* 85:3, 304-321, 1995.

Monday, Jan. 26: Distributive Negotiations with Uncertainty: Winner’s Curse, etc.

Class format: lecture/discussion.

Preparation Reading:

(Ctools/Pckt 1) R.H. Thaler, “The Winner’s Curse,” Ch. 5 (pg. 50-62) in *The Winner’s Curse: Paradoxes and Anomalies of Economic Life*. Princeton University Press, 1992.

(Ctools/Pckt 1) P.K. Dutta, “Signaling Product Quality”, pp. 391-395 in *Strategies and Games: Theory and Practice*. Cambridge: MIT Press, 1999.

Sign up for Leckenby negotiation (30 minutes allotted in class will be sufficient).

(Read role and prepare for negotiation *before* the next class.)

Thursday, January 29: Conflict, Escalation, and Entrapment

Class format: 30 minutes, Negotiation Exercise #2: Leckenby; 55 minutes discussion.

Preparation Reading:

(Ctools/Pckt 1) Pruitt, Rubin and Kim, *Social Conflict*, pp. 58-67, 111-116, 142-167

(Ctools/Pckt 1) Schelling, " The Manipulation of Risk," *Arms and Influence*, pp. 92-125.

Mnookin et al, Chapter 4, “The Challenge of Dispute Resolution”

Sign up for 3-Way Organization negotiation (30 minutes in class will be sufficient).

Monday, February 2: Distributive Bargaining with Multiple Parties

Class format: 30 minutes, Negotiation Exercise #3: Three-way Organization; 55 minutes discussion.

Follow-up reading:

(Ctools/Pckt 1): Raiffa, *Art and Science of Negotiation*, Chapter 17.

Sign up for Oil Pricing negotiation (65 minutes allotted in class will be sufficient).
(Read role and prepare for negotiation *before* the next class.)

Thursday, February 5: Repetition and Reciprocity

Class format: 65 minutes, Negotiation Exercise #4: Oil Pricing; 20 minutes to begin debriefing.

Monday, February 9: Repetition and Reciprocity 2: Avoiding Exploitation

Class format: discuss Oil Pricing and related concepts.

Preparation: Reflect on Oil-Pricing exercise, and read:

(Ctools/Pckt 1) Douglas Hofstadter, "The Prisoner's Dilemma Computer Tournaments and the Evolution of Cooperation", *Metamagical Themas* Bantam, 1985, pp. 715-734

Sign up for Universal Aircraft negotiation: NOTE: Budget 2 hours to prepare, plus at least one short meeting with your counterpart before class. 85 minutes of in-class time scheduled to complete the negotiation may not be sufficient.

Thursday, February 12: Creating and Claiming Value: The Negotiators' Dilemma

Class format: all Negotiation Exercise #5: Universal Aircraft.

NOTE: You might find you can complete this exercise in class, but don't count on it. You may have to do some additional negotiating before or after class.

Monday, February 16: Creating and Claiming Value: The Negotiators' Dilemma 2

Class format: discuss Universal Aircraft negotiation and related concepts.

Preparation: Reflect on Universal Aircraft negotiation, and read:

Mnookin et al, Chapters 1 and 2.

Thursday, February 19: Creating and Claiming Value 3

Class format: lecture/discussion, viewing video excerpts.

Preparation Reading:

(Ctools/Pckt 2) "Cottonburger" Instructions for Sylvester Jones and Reuben Schwartz.
(We will view and discuss video excerpts of two senior lawyers negotiating on behalf of Jones and Schwartz.)

Mnookin et al, Chapter 5, "Challenges of Deal-Making" and Chapter 6, "Psychological and Cultural Barriers"

Monday, February 23 and Thursday, February 26: Winter Break

Monday, March 2: Influence and Communication Tricks

Class format: lecture/discussion.

Preparation Reading:

- (Ctools/Pckt 2) R. Cialdini, *Influence: the psychology of persuasion*. Ch. 2, “Reciprocation”, Ch. 3, “Commitment and Consistency”, Ch. 4, “Social Proof”.
- (Ctools/Pckt 2) Jon Elster, “Strategic Uses of Argument”

Sign up for Edgewood Electric negotiation

Thursday, March 5: Edgewood Electric Negotiation

Class format: all Negotiation Exercise #6: Edgewood Electric.

Monday, March 9: Internal-External Negotiations 1

Class format: discuss Edgewood Electric and related concepts.

Preparation: Reflect on Edgewood negotiation, and read:

- Mnookin et al Chapter 3, “The Tension between Principals and Agents”.

Thursday, March 12: Internal-External Negotiations 2: Final Offer

Class format: view film “Final Offer,” begin discussion.

Preparation Reading:

- (Ctools/Pckt 2) Background Note: GM-UAW Negotiations, 1984

Monday, March 16: Internal-External Negotiations 3

Class format: Discuss “Final Offer” and related concepts.

Sign up for Sue or Settle exercise

Thursday, March 19: Internal-External Negotiations 4: Sue or Settle

Class format: all Negotiation Exercise #7: Sue or Settle.

Monday, March 23: Int-Ext Negotiations 5: Lawyering in Deals and Disputes

Class format: lecture/discussion, discuss Sue or Settle exercise.

Preparation Reading:

- Mnookin et al Ch 7, “Behind the Table,” Ch 8, “Across the Table”

Sign up for Seeport exercise

Thursday, March 26: Multi-party Negotiations: Seeport

Class format: all Negotiation Exercise #8: Seeport.

Monday, March 30: Multi-Party Neg'ns 2: Allies and Adversaries, Strategic Sequencing

Class format: debrief Seeport and lecture/discussion.

Preparation Reading:

Mnookin et al, Chapter 12, "Organizations and Multiple Parties"

(Ctools/Pckt 2) Sebenius, "Sequencing to build coalitions: with whom should I talk first?" in Zeckhauser, Keeney, Sebenius, eds., *Wise Choices: Decisions, Games, and Negotiations*. Harvard Business School Press, 1996, pp. 324-348

Thursday, April 2: Ethical Issues in Negotiations

Class format: lecture/discussion.

Preparation Reading:

Mnookin et al, Ch 11, "Professional and Ethical Dilemmas"

Shell, Ch. 11, "Bargaining with the Devil" (re-read)

(Ctools/Pckt 2) Carr, "Is Business Bluffing Ethical?", HBS Case 1-391-298 (abridged from HBR article)

(Ctools/Pckt 2) J. J. White, "Machiavelli and the Bar: Ethical Limitations on Lying in Negotiation," in Goldberg, Sander and Rogers, Dispute Resolution: Negotiation, Mediation, and Other Processes, 2nd. edition, pp. 74- 82 (Little, Brown, 1992).

NOTE: Specific materials for the following five classes still to be chosen, from:

- Case analyses (1 class each): Law of the Sea, Conoco "Green Oil", others TBD
- New negotiation exercises (1-2 classes each): "Love in the Afternoon", "Venture Capital", possible others TBD

Monday, April 6:

Thursday, April 9:

Monday, April 13:

Thursday, April 16:

Monday, April 20:

Wednesday, April 22 (treated as Monday due to MLK in January) Course Wrapup

Class format: lecture/discussion.

Preparation Reading:

Mnookin et al, Ch 9, "Advice for Resolving Disputes," Ch 10, "Advice for Making Deals"