**Washington University School of Law Required 1L Negotiation Course (1cr.)**

# Class Schedule, Objectives, Learning Outcomes, and Assignments

*All times are approximate*

## Course Objectives/Learning Outcomes:

Negotiation is the most commonly used form of legal dispute resolution in the United States and around the world. This required course is designed to introduce students to the basics of negotiation through reading, discussion, simulation exercises, and videos. The course focuses on negotiation theory, negotiation skills, lawyer (agent)/client (principal) dynamics, negotiating in teams, and negotiation ethics.

The ability to participate successfully in legal negotiations rests on a combination of five core skills that students will begin to develop in this course: 1) theoretical understanding; 2) interpersonal and intrapersonal awareness; 3) planning; 4) drafting; and 5) reflection. This course provides students with a set of conceptual frameworks and practice experiences that will enhance understanding and skill level in these areas, from the various perspectives of negotiators, advocates, and clients in negotiations.

This introductory course lays the foundation for learning in upper-level negotiation and dispute resolution courses, as well as doctrinal courses. The course introduces issues of leadership, professional identity, bias, cross-cultural competency and cross-cultural humility. The course also helps prepare students for negotiation and dispute resolution issues soon to be added to the multi-state bar exam.

## Course Requirements:

* Attendance will be taken at the beginning of each class session. Because this is a short, one-credit class, anyone who is not present for all four days will not earn credit for the class and will be required to retake it at another time.
* There is no final examination for this course, but there is required reading and four required short papers. Students may discuss the assignments with each other but must draft the assignments individually. Students are urged to use their own words in response to the questions. Students are not required to footnote references to the assigned books, other than an initial reference, unless using direct quotations. Students must submit each of their four papers via Canvas before the beginning of each class and receive a passing mark on each paper to pass the course. Students who fail to submit passing papers before the beginning of each class will not earn credit for the course and will be required to retake it at another time.
* In addition to the four required papers, there are other short assignments, including a Negotiation Self-Analysis & Partner Feedback Form following each exercise. Students must submit passing papers related to the negotiations by the conclusion of each class to pass the course.

**ABA Standard 310:**

ABA Standard 310 requires “not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week or the equivalent amount of work over a different amount of time" for each credit hour awarded.” This course is designed to meet this requirement, and each student is expected to spend no less than 42.5 hours of total work per credit hour.

## Texts:

Students must read Roger Fisher & William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (any edition) before beginning the course. Assigned readings in addition to *Getting to Yes* will be available on the course Canvas page. Students are strongly encouraged to read the additional readings before beginning the course. Each day’s module on Canvas will include assigned readings and relevant handouts and links.

**Tuesday August 23: Negotiation Theories, Strategies, and Styles**

**Class Schedule:**

1:00-2:00 Introduction to the Course and Overview of Day

2:00-2:35 First Negotiation Exercise: The Gallery

2:35-2:45 Share Reflections with Other Side

2:45-2:55 Break

2:55-3:30 Analysis of First Exercise

3:30-4:30 Discussion of Getting to Yes and Theories of Negotiation

**Assignment:** Please read the entirety of Roger Fisher & William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (any edition). Please come to class prepared to discuss the reading and to pose two comments or questions.

To be eligible for credit for the course, students must submit before the beginning of class via Canvas a Pre-Negotiation Course Profile, along with a written memo of minimum four (4) pages, maximum five (5) pages, that addresses the questions below. Please use 12 pt. Times New Roman font, 1.5 spacing. In your memo, please answer the following questions:

1. What are the downsides of bargaining solely over positions in a negotiation? Why and how could one shift the focus from positions to underlying interests in a negotiation?
2. Compare distributive bargaining to problem-solving negotiation. Can lawyers change adversarial bargaining to problem-solving in disputes and deals without risking exploitation? What comparative benefits do you think lawyers bring to negotiations?
3. Identify various kinds of interpersonal and intrapersonal people problems that might occur in a negotiation. Why and how could one separate people from the problem in a negotiation? Why and how could one invent and use options for mutual gain in a negotiation? What are possible obstacles to inventing and using these options?
4. Why and how could one develop and use objective criteria in a negotiation? Why and how could one develop and use their and the other side's BATNA?
5. What is the definition of a successful negotiation?
6. What do you see as the biggest pro and the biggest con of the approach suggested in *Getting to Yes*.

# Wednesday, August 24: Lawyer (Agent)/Client (Principal) Relationships, Professional Identity, Confidentiality, Negotiation Ethics

# Class Schedule:

1:00-2:10 Discussion of Readings and Overview of Day

2:10-2:30 Prepare for Second Negotiation Exercise (with same party)

2:35-2:45 Break

2:45-3:30 Second Negotiation Exercise: Client Interview/Retainer Agreement

3:30-3:40 Share Reflections with Other Side

3:40-4:30 Analysis of Second Exercise

**Assignment:** Please read the Model Rules of Professional Conduct (focus on the Preamble and Rules 1, 4, and 8); read pp. 95-138 in Art Hinshaw & Jess K. Albert, *Doing the Right Thing: An Empirical Study of Attorney Negotiation Ethics;* and read *Beyond Words* (and complete the short listening test at the end of that article).

Please come to class prepared to discuss the readings and to pose two comments or questions. To be eligible for credit for the course, students must submit before the beginning of class via Canvas a completed listening test (located at the end of the *Beyond Words* article), plus a written memo of minimum three (3) pages, maximum four (4) pages, that addresses the below questions. Please use 12 pt. Times New Roman font, 1.5 spacing. In your memo, please answer the following questions:

1. What are potential professional and ethical dilemmas for lawyers (agents) when engaged in negotiations on behalf of clients (principals)?
2. Why do you think lawyers violate rules such as Model Rules 1, 4, or 8?
3. Can lawyers and/or clients lie in negotiations? What are the risks, rewards?
4. What is the role of confidentiality in legal negotiations?
5. What does it mean for a lawyer to listen beyond the words? What does it mean to lawyer “with” your client, rather than “for” your client? What is client-centered lawyering?

**Thursday, August 25: Bias, Cultural Competence, Cultural Humility**

## Class Schedule:

1:00-1:40 Discussion of Readings and Overview of Day

1:40-2:00 Prepare for Third Negotiation Exercise (with partner)

2:00-2:40 Third Negotiation Exercise: Sally Soprano

2:40-2:50 Share Reflections

2:50-3:00 Break

3:00-4:00 Analysis of Third Exercise

4:00-4:30 Joint Planning for Fourth Exercise (with same party)

**Assignment:** Please read Sue Bryant and Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering.*

Please come to class prepared to discuss the readings and to pose two comments or questions. To be eligible for credit for the course, students must submit before the beginning of class via Canvas a written memo of minimum two (2) pages, maximum three (3) pages, that addresses the below questions. Please use 12 pt. Times New Roman font, 1.5 spacing. In your memo, please answer the following questions:

1. In what ways might bias and culture influence lawyering with clients and others, and what potential issues might arise for you in client interactions and negotiations?
2. What are your biggest insights/take-a-ways as to each of the five habits for cross-cultural lawyering that you might use to help identify your biases and cultural norms, and those of your clients and others, to enhance your communications and negotiations?

# Friday, August 26: The Art of Persuasion

## Class Schedule:

1:00-1:40 Discussion of Video and Overview of Day

1:40-1:50 Prepare for Fourth Exercise (with partner)

1:50-3:00 Fourth Exercise: Multi-Party Negotiation

3:00-3:10 Share Reflections

3:10-3:20 Break

3:20-4:30 Analysis of Fourth Exercise, Concluding Lecture, Next Steps to Improve as a Negotiator

Assignment: Please watch the first 17 minutes of *Mr. Rogers and the Power of Persuasion* , <http://www.youtube.com/watch?y=_DGdDQrXy5U> (link also available on Canvas), and read Carmine Gallo, *The Art of Persuasion Hasn’t Changed in 2,000 Years*, available at https:// [www.carminegallo.com/the-art-of-persuasion-hasnt-changed-in-2000-years/](http://www.carminegallo.com/the-art-of-persuasion-hasnt-changed-in-2000-years/) Please come to class prepared to discuss the video and reading, and to pose two comments or questions as to how the art of persuasion is relevant to negotiations and dispute resolution.

To be eligible for credit for the course, students must submit before the beginning of class via Canvas a written negotiation plan of minimum two (2) pages, maximum three (3) pages. Please use 12 pt. Times New Roman font, 1.5 spacing. In your negotiation plan, please include four columns, one each for you and your partner and one each for the other side and her/his partner. Identify what you understand/guesstimate each side wants (substantive and relationship goals/ positions), why (underlying interests), how (optimal negotiation styles), cultural/ethical issues, options for achieving mutual gains as to substantive and relationship goals, information you want to obtain/retain, aspiration points, resistance points (bottom lines), and BATNAs.