

Negotiations
Professor Aaron D. Simowitz
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Spring Term, 2021
Classroom: LAW 242
Tues. & Thurs., 3:20pm-4:50pm
Office Hours: Tues. & Fri., 1:40pm-3:10pm

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Learning Objectives:

This course is designed to: (1) develop your understanding of negotiation, and your awareness of yourself as a negotiator; (2) give you some tools and concepts for analyzing and preparing for negotiations; (3) enhance your negotiating skills through frequent role plays, reflection, and feedback; and (4) teach you how to keep learning from your own negotiation experience. In addition to negotiation skills and theory, you will be introduced to issues of representation and ethics.

Class Meeting Times, Zoom Link, and Office Hours Summary:

Class times: Tuesdays & Thursdays, 3:20pm-4:50pm

Zoom link:

<https://willametteuniversity.zoom.us/j/98058062262?pwd=SXR6Vk15MHRIVHZOUkZ2OXVOeGZkUT09>

Meeting ID: 980 5806 2262

Passcode: BATNA2022!

Office hours: Tues. & Fri., 1:40pm-3:10pm

Please note that all our class meetings and office hours for the first two weeks of the semester will be **remote**. Thereafter, we will meet in Room 242. Office hours will be remote unless otherwise agreed in advance.

Required Texts:

* Getting to Yes: Negotiating Agreement Without Giving In (Roger Fisher, William Ury and Bruce Patton, Penguin Books, 3d Edition 2011, Paperback)

* Beyond Winning: Negotiating to Create Value in Deals and Disputes (Robert Mnookin, Scott Peppet and Andrew Tulumello, Belknap Press of Harvard University Press; 2004, Paperback)

Suggested Supplemental Reading:

Available on the class WISE site. You will enjoy a wide and discretionary choice among the reading options. See journal instructions for your incorporation of these readings into your Journal.

Preliminary Assignment:

* Begin reading Getting to Yes (Chapters 1-3).

Grading:

60% Journal; 40% class participation. Please read the journal requirements on the assignment sheet carefully. There will be no final examination.

Simulation Assignments and Instructions:

General and confidential instructions will be available on the class WISE site. Please read only the confidential instructions for your assigned group. (I trust you—but I can also see who accesses what on the WISE site.)

I will assign you to new negotiations groups for each simulation. I will post these groups to the WISE site several days before the simulation. Please take advantage of the opportunity to prepare for the

negotiation. Unless noted otherwise, preparations are **by team** (as opposed to by side or by role).

Class Participation:

As a guide to the importance of class participation in developing negotiation skills and good adaptability and judgment, note the following grading criteria:

- + Questions, observations or insights which develop, connect, or clarify themes or new learning.
- + Creative or innovative efforts observed during your negotiation whether planned or spontaneous. These efforts encompass substantive as well as relationship building matters.
- + Ability to purposively guide (as distinguished from control) your negotiation.
- Lack of conscientious preparation or interest in the exercise which may affect your classmate's learning opportunity.

General Instructions on all Exercises:

- * The goal is not acting. The goal is to act on the basis of your best advice: Think of the best advice you would give to another and then follow that advice. However, in order to maximize the benefit of the exercises, think about how real people would act in these situations, and consider the full context of your role in the exercises.
- * You might not try a particular approach in the real world because you do not know how it might affect the negotiation, yet you think it might work; by all means try it.
- * The goal is not proving that you can reach agreement, but rather obtaining a good outcome. (For now, think about what a good outcome is.)
- * As for the facts of the case, you may not significantly alter the facts. You may embellish on the given facts in order to more naturally communicate with the other side. You may lie (if you think it will help!) and the lie does not alter the facts of the case.
- * Do not hand over confidential information to prove you are telling the truth!
- * Do not compare results with others before the review in class.

Journals:

Product of your Journal activity over the duration of the course:

1. Self – evaluative, introspective and analytical reflections on your negotiation experience during and outside the workshop (not just a summary or minutes of the lectures or the negotiations).
2. What worked . . . and why.

3. What didn't work . . . and why.
4. Obstacles you encountered . . . and how you overcame them.
5. What you may do differently next time.
6. Questions you have had . . . why they persist . . . and what you are doing to seek answers to them. Be precise by reference to specific events and, where possible, illustrative dialogue. Avoid general assertions such as, "I'm not very assertive," or "My opponent wasn't open to new ideas."
7. Progressive and cumulative self-examination of the lessons which you want to retain from your experience and analytic reflections from negotiations during and outside the workshop and which you would review before undertaking a similar negotiation in the future.
8. Weekly entries should be approximately 1.5 to 2 double-spaced typed pages. Thus, your final journal will comprise 21-28 pages, plus attachments. A weekly entry may be longer or shorter than the average length depending upon the value of the class sessions in your estimation. Pages shall be numbered consecutively.
9. Integrate into your Journal reflections or critiques on at least six of the articles or excerpts from the supplemental readings, and at least three readings from Professor Mnookin's text. You may compare, contrast or criticize authors, articles and class discussions. Do not write "book reports." Selecting only short excerpts does not demonstrate intellectual curiosity or good judgment. Please list the articles and texts chosen in a bibliography showing the page in your Journal where the article or text is discussed.
10. Journal entries are due by **5 pm on Wednesdays**.

Remote Attendance:

* Because of teaming for all negotiations, class attendance is required. Absences and lack of preparation will affect your grade.

We will be taking attendance for this course in each meeting. As a baseline, I will count you as attending only if you have signed into the proper zoom link for the course on time, and your video is on. I will use Zoom's tools to determine who is present in the course. Note that while you can change your screen name in zoom, I'd ask that you use your preferred first and last names for this in order to help me know who's who.

It's a lot harder to gauge participation in a remote environment. For that reason, unless you communicate with me in advance or I instruct otherwise, I will only count you as being in attendance if your video is on during the entire class. I know that there will be occasional times when you will need to turn off your video if something is going on in the background, etc. (though you should feel free to use the virtual backgrounds liberally), and that's fine (though you really shouldn't worry about your pet or child introducing themselves). But if you anticipate that you are going to have regular issues with your internet or your webcam working, for instance, please let me know. WITS and other resources can help a lot, and we will work to make sure you can participate fully in the course.

I know that there are other ways to actively participate in class even if your video is off – asking questions in the chat, for instance – but I expect you to actively participate. Worst of all will be if your video is off and I call on you and you are not present; that circumstance is grounds for marking you absent from the class, and if it's a repeated issue, can be grounds for a one-half grade downgrade in your final grade. If you are realizing that you are having technology problems in a class, just send me a private chat or email to let me know. If the problem repeats itself, we'll connect you with WITS to help.

Signing into Zoom from your Willamette profile (i.e. not as a “guest”)
(seriously, do this, even though you have already been to Zoom classes)
(and yes, I know that we've been at this for two years now, but still)

WITS recommends the following:

“We've found the following steps are the best way to insure that you are signing into Zoom correctly:

1. Make sure you've downloaded and installed the latest version of the "**Zoom Client for Meetings**": [Zoom downloads](#)
2. Before attempting to join a Zoom session from WISE, a calendar invite, or elsewhere, open the Zoom application now installed on your computer.
3. Click the "**Sign in with SSO**" option.
4. In the company domain box, type "**willametteuniversity**", and then click the "Continue" button.
5. You will be redirected to the standard Willamette login page in your web browser, where you should sign in as usual.
6. You'll then be redirected back to the Zoom application as a signed-in user. Your browser may ask you to approve the redirect back to Zoom or the re-launch of the Zoom application.”

Please update to the most current version of Zoom. If you have any questions, please feel free to contact me or WITS.

Feedback:

I am available for individualized feedback during office hours or during individual calls or zoom sessions, which I am happy to schedule over email. See Doug Stone and Sheila Heen, *Thanks For The Feedback: The Science and Art of Receiving Feedback Well* (2014).

Office Hours, Zoom Link, and other ways to chat outside class:

Tuesdays & Fridays: 1:40pm—3:10pm

Zoom link: <https://willametteuniversity.zoom.us/j/99197814451>

Please sign up in groups or individually on the googledoc:

<https://docs.google.com/spreadsheets/d/1dSZIRpa3J8-OH34EasJGNwDjdy1VFspNx14jhwpNiFc/edit?usp=sharing>

Please feel free to contact me at asimowitz@willamette.edu. I will make every effort to respond to your e-mail within one business day. Please include “*** **NEGOTIATIONS** ***” in the subject line of your e-mail so that I do not miss it. Please also include a phone number where you can generally be reached. (I find it easier to discuss complicated legal concepts by phone than by e-mail. Actually, I feel that way about pretty much every topic.) If you do not hear back from me within one business day, please email me again, as I may have missed your email.

Make-up Classes

I do not anticipate needing to cancel any classes at this time. Should that change, we may use our Friday office hours time slot for make-up classes (zoom information will be the same as our regularly scheduled classes).

Podcasts

Totally optional, but kinda fun. Good listening if you (like me) have a lot of dishes and laundry to do. You will find them on the class WISE site.

Information for Students with Disabilities:

Willamette Law is committed to making sure that everyone is able to participate fully in our courses. If you have particular needs for access to this course that you need in order to do that, please contact Dean Mac Alpine or Sue Minder, Director of Accessible Education Services, at sminder@willamette.edu or 503-370-6737.

Class Schedule:

Week One:

Preliminary Assignment for Week One:

* Begin reading Getting to Yes (Chapters 1-3).

Tuesday Class:

90 min: Course and class introductions

* Get instructions for Oil Pricing Exercise.

Thursday Class:

80 min: Oil Pricing Exercise

10 min: Administrative Matters

* Select a journal partner (discretionary).

* Discuss confidentiality of journals.

* Get confidential instructions for Sally Soprano.

Week Two:

Individual Preparation for Week Two:

- * Prepare to negotiate Sally Soprano
- * Finish reading Getting to Yes: Negotiating Agreement Without Giving In.
- * Plan first meeting with your Journal partner.

* You may choose to read G. Richard Shell, When is it Legal to Lie in Negotiations?, 32 Sloan Mgt. Rev. 93-101 (1991); Peter Reilly, Was Machiavelli Right? Lying in Negotiation and the Art of Defensive Self-Help, 24 Ohio St. J. on Disp. Resol. 481 (2009) from the reading list.

Tuesday Class:

30 min: Prepare to negotiate Sally Soprano.

30 min: Negotiate Sally Soprano. Record and turn in your outcome (one report for each pair of negotiators).

30 min: Review Sally Soprano.

- * Get confidential instructions to The PowerScreen Problem.

Thursday Class:

10 min: Prepare individually to negotiate Exercise II.

20 min: Negotiate Exercise II.

10 min: Review Exercise II.

40 min: Prepare by side to negotiate The PowerScreen Problem.

Week Three:

Individual Preparation for Week Three:

- * Prepare for The Powerscreen Problem.
- * Meet with your journal partner.
- * Read Mnookin on four tensions in negotiations, 9-92; 117-18; 262-64.

* You may choose to read Gunia, Swaab, Sivanathan and Galinsky, "The Remarkable Robustness of the First-Offer Effect: Across Culture, Power, and Issues," *Personality and Social Psychology Bulletin*; R. Fisher, *He Who Pays the Piper*, 63 *Harv. Bus. Rev.* 150 (1985), R. Mnookin and R. Birke, *Saddam's Folly: Playing Chicken With George Bush*, 8 *Neg. J.* 41 (1992); from the reading list.

Tuesday Class:

30 min: Prepare by team to negotiate The PowerScreen Problem.
60 min: Negotiate The PowerScreen Problem.

Thursday Class:

90 min: Review The PowerScreen Problem.

- * Get confidential instructions for Bullard Houses.

Week Four:

Individual Preparation for Week Four:

- * Prepare to negotiate Bullard Houses.
- * Meet with your journal partner.

* You may choose to read J. Rubin and F. Sander, "When Should We use Agents: Direct vs. Representative Negotiation," 4 Neg. J. 395 (1988) from the reading list.

Tuesday Class:

90 min: Negotiate Bullard Houses. Record and turn in your outcome (one report for each pair of negotiators).

Thursday Class:

90 min: Review Bullard Houses.

- * Get confidential instructions for John & Mary.

Week Five:

Individual Preparation for Week Five:

- * Read John & Mary and meet with your attorney or client to prepare for the negotiation.
- * Meet with your journal partner.

* You may choose to read D. Kolb and G. Coolidge Her Place at the Table: A Consideration of Gender Issues in Negotiation, *Prog. on Neg. Working Paper 88-5* (1988) and S. Heen, *Defining Gender Differences: Is the Proof in the Process?*, *12 Neg. J.* 9 (1996) from the reading list.

Tuesday Class:

90 min: Negotiate John & Mary.

Thursday Class:

90 min: Review John & Mary.

- * Get confidential instructions for Weathers & Evans (1-on-1 plus observers).

Week Six:

Individual Preparation for Week Six:

- * Prepare to negotiate Weathers & Evans.
- * Meet with your journal partner.

* You may choose to read J. White, The Pros and Cons of “Getting to Yes,” and R. Fisher, Comment, 34 J. Legal Ed. 115 (1984), G. Goodpaster, A Primer on Competitive Bargaining, 1996 J. Disp. Resol. 325 from the reading list.

Tuesday Class:

90 min: Negotiate Weathers & Evans (1-on-1 plus observers). Observers to observe and give feedback on process matters only.

Thursday Class:

90 min: Review Weathers & Evans.

- * Get confidential instructions for Teflex Products (5 parties; 6 roles)

Week Seven:

Individual Preparation for Week Seven:

- * Prepare to negotiate Teflex Products.
- * Meet with your journal partner.

* You may choose to read J. Brett, *Negotiating Group Decisions*, 7 *Neg. J.* 291 (1991) from the reading list.

Tuesday Class:

20 min: Preparation by role for negotiation of Teflex Products (5 parties).

70 min: Negotiate Teflex Products.

Thursday Class:

90 min: Review Teflex Products.

- * Get The DONS Negotiation (2-on-2).

Week Eight:

Individual Preparation for Week Eight:

- * Prepare to negotiate The DONS Negotiation.
- * Meet with your journal partner.
- * Read Mnookin on professional and ethical dilemmas, and psychological and cultural barriers, 274-294; 156-172.

* You may choose to read James K.L. Lawrence, *Lying, Misrepresenting, Puffing and Bluffing: Legal, Ethical and Professional Standards for Negotiators and Mediation Advocates*, 29 Ohio St. J. on Disp. Resol. 35 (2014) from the reading list.

Tuesday Class:

90 min: Negotiate The DONS Negotiation.

Thursday Class:

90 min: Review The DONS Negotiation.

- * Get confidential instructions for Chestnut Village.

Week Nine:

Individual Preparation for Week Nine:

- * Prepare **by role** to negotiate Chestnut Village.
- * Meet with your journal partner.
- * Read Mnookin on organizations and multiple parties, 295-314.

* You may choose to read W. McCarthy, *The Role of Power and Principle in Getting to YES* and R. Fisher, *Beyond YES*, 1 Neg. J. 59, 67 (1985) from the reading list.

Tuesday Class:

30 min: Prepare to negotiate Chestnut Village by team.

60 min: Negotiate Chestnut Village.

Thursday Class:

90 min: Review Chestnut Village.

- * Get confidential instructions for MAPO - Administration Negotiation.

Week Ten:

Individual Preparation for Week Ten:

- * Prepare to negotiate MAPO - Administration Negotiation.
- * Meet with your journal partner.

* You may choose to read R. Fisher, "Quick Fix" Solutions Are Not The Answer, 8 Neg. J. 15 (1992) from the reading list.

Tuesday Class:

20 min: MAPO – Administration Negotiation; Preparation by team. (In preparation for negotiation of MAPO - Administration Negotiation, each side may ask for clarification, on its instructions, respectively, from the Mayor of Metropolis or the Union's President, L. Hand.)

70 min: Negotiate MAPO - Administration Negotiation

Thursday Class:

90 min: Review MAPO: Administration Negotiation.

- * Get confidential instructions for Harborco (6 parties).

Week Eleven:

[NB: Cancelled for Spring Break.]

Week Twelve:

Individual preparation for Week Twelve:

- * Read and prepare to negotiate Harborco.
- * Meet with your journal partner.
- * Read Mnookin on hard-bargaining tactics, 24-25; 211-223; 147-48.

* You may choose to read B. Patton, *Reassessing Getting to YES and Principled Negotiation*, *Prog. on Neg. Working Paper 85-6 (1983)* from the reading list.

Tuesday Class:

90 min: Negotiate Harborco (6 parties).

Thursday Class:

90 min: Review Harborco.

- * Get confidential instructions for Rebuilding the World Trade Center Site.

Week Thirteen:

Individual preparation for Week Thirteen:

- * Read and prepare to negotiate WTC.
- * Meet with your journal partner.

Tuesday Class:

90 min: Negotiate/Facilitate Rebuilding the World Trade Center Site (5 parties and the facilitator).

Thursday Class:

90 min: Review Rebuilding the World Trade Center Site.

- * Get confidential instructions for the Bankruptcy Negotiation

Week Fourteen:

Individual preparation for Week Fourteen:

- * Read and prepare to negotiate the Bankruptcy Negotiation.
- * Meet with your journal partner.

Tuesday Class:

90 min: Negotiate the Bankruptcy Negotiation (5 parties and the facilitator).

Thursday Class:

90 min: Review the Bankruptcy Negotiation.