

**VERMONT LAW SCHOOL**  
**NEGOTIATION**  
**ADR 6420.01 (2 Credits)**

**Spring Term 2018**

Professor Gregory S. Clayton  
[gsclayton@vermontlaw.edu](mailto:gsclayton@vermontlaw.edu)

**Class (Map Room, Debevoise Hall):**

Friday, February 2<sup>nd</sup> (2:30 p.m. – 6:30 p.m.)  
Saturday, February 3<sup>rd</sup> (8:30 a.m. – 6:30 p.m.)

Friday, February 16<sup>th</sup> (2:30 p.m. – 6:30 p.m.)  
Saturday, February 17<sup>th</sup> (8:30 a.m. – 6:30 p.m.)

**Final Negotiation (Waterman 003):**

Wednesday, February 21<sup>st</sup> (8:30 a.m., 9:55 a.m., 11:20 a.m.)  
Tuesday, February 27<sup>th</sup> (8:30 a.m., 9:55 a.m., 11:20 a.m.)

**Office Hours (Waterman 112):**

Friday, February 2<sup>nd</sup> (12:30 p.m. – 2:30 p.m.)  
Saturday, February 3<sup>rd</sup> (7:30 a.m. – 8:30 a.m.)  
Friday, February 16<sup>th</sup> (12:30 p.m. – 2:30 p.m.)  
Saturday, February 17<sup>th</sup> (7:30 a.m. – 8:30 a.m.)

**Course Description:**

THIS IS AN INTENSIVE COURSE TO BE OFFERED OVER THE COURSE OF 4 DAYS, FOLLOWED BY A FINAL NEGOTIATION. The designated days are: **Friday, February 2<sup>nd</sup>, Saturday, February 3<sup>rd</sup>, Friday, February 16<sup>th</sup>, and Saturday, February 17<sup>th</sup>**. The hours for class are Friday 2:30 p.m. - 6:30 p.m., Saturday 8:30 a.m. - 6:30 p.m. The final negotiations will be on either February 21<sup>st</sup> or February 27<sup>th</sup> (depending on your other course obligations).

Negotiation is a process that legal professionals engage in daily, but seldom think about in any systematic way. This course is designed to help you develop the knowledge, skills and insight to be an effective, creative and ethical negotiator. You will be expected to learn and apply theories from class readings and discussions. You will participate in a series of highly interactive negotiation simulations. We will focus on the use of negotiation in making deals and in resolving disputes. We will conduct progressively more challenging simulations in a variety of contexts. We will explore how dynamics change when moving from two-party to multi-party negotiations and when moving from single-issue negotiations to negotiations involving multiple

issues. We will address differences between distributive and integrative negotiation. We will also focus on ethical issues that arise in negotiations, and how to conduct negotiations consistent with personal ethical precepts as well as the requirements of the Model Rules of Professional Conduct. Readings and simulation preparation will need to be completed ahead of time. A final negotiation will allow you to use what you have learned in the course.

The cornerstone of this course is using your experience during the simulations as a way to improve your negotiation skills, learning from successes and mistakes, as well as from close observation of the negotiation styles and approaches of other students. Self-reflective journaling of each negotiation will be required to document your transformation as a negotiator.

### **Learning Outcomes, Goals and Competencies:**

This class is an intensive and interactive skills course in which you will:

- *Learn* the theory, principles and practice of negotiation, including both distributive and integrative approaches to negotiation;
- *Undertake* investigative negotiation and *utilize* the relationship-building that occurs with such an approach;
- *Engage* in negotiations requiring joint problem-solving and joint decision-making;
- *Develop* negotiation skills and negotiation confidence through experiential learning involving personal participation in increasingly more complex simulations;
- *Experiment* with a variety of negotiating techniques in different contexts, including legal, personal, commercial, bilateral, multi-lateral and multi-issue matters;
- *Become* familiar with and *learn to resolve* ethical issues that arise in negotiations;
- *Explore* and *refine* your individual style, reaction and attitudes toward conflict and dispute resolution;
- *Observe, experience* and *comment on* the negotiation approaches of others and incorporate these, as appropriate, into your own negotiation practice;
- *Develop* the ability to identify opportunities for, and employ, value-creation to address challenging negotiation situations that cannot be resolved with traditional distributive approaches;
- *Apply* techniques of persuasion, including reframing, during simulations to work toward closure;
- *Utilize* progressive, self-reflective journaling as a learning tool to chart your progress as a negotiator and document the competencies you develop.

### **Course Requirements:**

You will be expected to read, write, discuss and negotiate in this course. You will be required to apply what you learn through participation in simulated negotiation exercises. Specifically, you will be expected to:

- attend **all** scheduled classes on time, prepared and ready to participate in the exercises and discussion;

- complete all the assigned reading;
- take part and contribute to in-class discussions;
- be self-reflective of your own negotiation skills, open to feedback and prepared to offer constructive comments and critiques to your classmates;
- conduct a final negotiation;
- write reflective journals for **each simulation** (excluding Prisoner's Dilemma and the final negotiation); and
- write a final journal reflecting on what you have learned in this course.

## **Journals**

*Journals must be typed as MSWord documents.* They should be grammatical, spell-checked, and thoughtful. You need to be honest, self-evaluative and willing to discuss and learn from mistakes or approaches that did not work well as well as your accomplishments. Journals should build upon each other, drawing on lessons learned in prior simulations. Please write your name and the name of the simulation at the top of all journal entries. With the exception of Journal #1, discussed below (which is to be handed in), all other journals shall be submitted on TWEN.

### **Journal #1: Letter to Future Self**

Your first journal should be submitted, typed in hard copy, at the first class (February 2<sup>nd</sup>) as a letter to your future self (at least 500 words), addressing:

- What I hope to get out of this seminar;
- What questions or concerns I have going into the course;
- What I perceive as my strengths and weaknesses as a negotiator based on personal experience;
- What I hope to improve upon in this course;
- Any general propositions or "rules of thumb" about negotiation that I subscribe to, including ethical limitations. (As you have negotiated your whole life -- with parents, neighbors, friends, and employers -- you bring assumptions about negotiation into this course.)

After that, separate journals must be submitted for the following negotiations: **Model A, Timber Harvest, Bowling Ball, Frisbee, Chuck's Wagon, Water Circle, FG&T & Metropolitan Water**. The journals must be submitted in MSWord format on TWEN after each simulation.

The journals after our first round of simulations on February 2<sup>nd</sup> and 3<sup>rd</sup> are due **Wednesday, February 7<sup>th</sup> at 9:00 a.m.**

The journals after our second round of simulations on February 16<sup>th</sup> and 17<sup>th</sup> are due **Friday, February 23<sup>rd</sup> at 9:00 a.m.**

The final journal is due **Friday, March 2<sup>nd</sup> at 9:00 a.m.**

These journals are designed to be personal reflections as well as evaluations of your counter-part in the simulation. At a minimum, you should reflect on your performance and that of your counter-part by discussing: (1) my goal; (2) how I valued different issues and why; (3) my initial strategy; (4) how my strategy changed during the negotiation or why it did not, and; (5) my success and mistakes; (6) the effectiveness of my counter-part

Length of each journal should be at least 500 words.

*The journal should not be an account of what you did, but rather a self-reflective discussion of what happened, what you learned, and what you would like to improve upon going forward. It should focus on process, not the substance, of the negotiation. Entries should be concise and thoughtful, and should reflect the most important parts of your learning. Focus as much on mistakes as what worked. You should use later journals as opportunities to reflect on how you have changed your approach from earlier negotiations. Exploring your patterns of negotiation over time will help improve your skills. Your journal is confidential and will be seen only by the instructor. Honest self-assessment in your journaling is key to your improvement as a negotiator. Insightful self-criticism will be an important part of this process.*

### **Final Journal**

The Final Journal (500-700 words) should be written as a response to Journal #1. This document should address the following points:

- Did I get out of this course what I hoped?
- Were my questions/concerns answered?
- What are my strengths/weaknesses as a negotiator as compared to when I began this course (as mentioned in the first journal)?
- What are the most important things I have learned about negotiation generally, my approach to negotiation, and any areas in which I would like to improve.

The way in which the Final Journal is written will count toward your grade. It must be a thoughtful piece that is well-organized, well-reasoned and written in proper grammar/syntax.

### **Final Negotiation**

You will be required to conduct a final negotiation after the last day of the class, which will allow you to apply what you have learned. The final negotiations will be scheduled for February 21<sup>st</sup> and February 27<sup>th</sup>, with a choice of six time slots over the course of two days to fit with your other course obligations. More details about this negotiation will be forthcoming.

### **Grading**

One third of your grade will be based on **Participation**, graded on:

- (1) participation in class discussions;
- (2) preparation for the simulations;
- (3) application of the theory in the simulations (not results of individual negotiations);

- and  
(4) attendance.

One third of your grade is based on your **Journals**, graded on:

- (1) analysis;
- (2) application of theory, readings and practice principles;
- (3) self-reflection and self-critique;
- (4) peer evaluation;
- (5) creativity; and
- (5) writing style, grammar and organization.

One third of your grade is based on your **Final Negotiation**, graded on:

- (1) preparation for the negotiation;
- (2) performance in the negotiation; and
- (3) your reflection on your performance and the others in your negotiation.

**Master Schedule and Assignment Deadlines:**  
(Note that this is only a summary of assignments  
that are set forth in detail elsewhere in this Syllabus)

Friday, February 2 <sup>nd</sup> (2:30 p.m.)	Read Syllabus; complete Parts I & II of <i>Negotiation Genius</i> ; read Model Rules of Professional Conduct 4.1, 1.6 & 8.4; read ABA Formal Opinion 06-0439; turn in First Journal
Friday, February 2 <sup>nd</sup> (2:30 p.m. – 6:30 p.m.)	<b>Class 1: Map Room</b>
Saturday, February 3 <sup>rd</sup> (8:30 a.m.)	Read roles for <i>Timber Harvest</i> , <i>Bowling Ball</i> and <i>Frisbee Dispute</i>
Saturday, February 3 <sup>rd</sup> (8:30 a.m. – 6:30 p.m.)	<b>Class 2: Map Room</b>
Wednesday, February 7 <sup>th</sup> (9:00 a.m.)	Submit Journals for <i>Model A</i> , <i>Timber Harvest</i> , <i>Bowling Ball</i> and <i>Frisbee Dispute</i>
Wednesday, February 14 <sup>th</sup> (9:00 a.m.)	Listen to The Moth Radio Hour: <i>Guilty</i> by Danusia Trevino found

	on Web Links on TWEN and submit Forum entry on TWEN
Friday, February 16 <sup>th</sup> (2:30 p.m.)	Read Part III of <i>Negotiation Genius</i> ; read roles for <i>Chuck's Wagon</i> , <i>Water Circle</i> , <i>FG&amp;T</i> and <i>Metropolitan Water</i> ; negotiate something and be prepared to discuss in class
Friday, February 16 <sup>th</sup> (2:30 p.m. – 6:30 p.m.)	<b>Class 3: Map Room</b>
Saturday, February 17 <sup>th</sup> (8:30 a.m.)	Review roles for <i>Water Circle</i> , <i>FG&amp;T</i> and <i>Metropolitan Water</i>
Saturday, February 17 <sup>th</sup> (8:30 a.m. – 6:30 p.m.)	<b>Class 4: Map Room</b>
Wednesday, February 21 <sup>st</sup> (8:30 a.m., 9:55 a.m., or 11:20 a.m.)	<b>Final Negotiations: Waterman 003</b>
Friday, February 23 <sup>rd</sup> (9:00 a.m.)	Submit Journals for <i>Chuck's Wagon</i> , <i>Water Circle</i> , <i>FG&amp;T</i> and <i>Metropolitan Water</i>
Tuesday, February 27 <sup>th</sup> (8:30 a.m., 9:55 a.m., or 11:20 a.m.)	<b>Final Negotiations: Waterman 003 (alternative date)</b>
Friday, March 2 <sup>nd</sup> (9:00 a.m.)	Submit Final Journal

**Attendance:**

This course is a skill-building class. Your learning depends on the efforts and commitment of all of us: **me, you and your fellow students**. Because you will be playing roles as negotiators, attorneys and clients, the learning of the entire class depends on your participation. To learn to negotiate you must do it; you cannot develop skills without attending class and doing exercises. Attendance at all class sessions is mandatory.

**Textbooks and Class Materials:**

D. Malhotra and M.H. Bazerman, *Negotiation Genius* (Bantam 2007) (paperback, ISBN 978-0-553-38411-6). An audio version of *Negotiation Genius* is also available on iTunes and Audible, providing a highly recommended way to reinforce your reading.

Other course handouts will be available on TWEN.

### **A Note on Confidentiality and Simulations:**

A basic premise of this course is that the best way to learn negotiation is to do it. During the course, you will be role-playing parts as both attorneys and clients in order to understand and experience the negotiation dynamic from different perspectives.

Most of the problems rely on confidential instructions that are specific to the particular role you will be playing. You will often be working with a partner or with other groups on the same "side" of a problem (for example, a client and her attorney or co-defendant). Please do not share confidential instructions about a problem with others, even if they are on your "side". *Sharing your confidential instructions would significantly detract from what you and other students will learn from this course, so please respect the importance of confidentiality to this course.*

Because it is difficult to design and refine effective negotiation problems for a course such as this, please do not share the written instructions with students not taking this course. Your honesty, integrity and ethical conduct are expected and appreciated in this and all matters in this class.

### **Feedback in Person and in Journals**

Constructive feedback is integral to your learning. During this course, you will be receiving feedback from your peers and from me, as well as giving feedback. The following "ground rules" for giving feedback are expected to be followed. **Please read them carefully:**

**Be self-reflective.** You are often the best judge of whether a particular style or technique is effective. Learn from mistakes and approaches that did not work, as well as your successes.

**Be open to feedback.** We can all improve. If you are open to feedback, it encourages others to do the same.

**Feedback to peers is a privilege with corresponding responsibilities, not an entitlement.** Always note strengths first, and then areas for development. Be positive if possible. When noting areas for development, critique, do not criticize. Make this process constructive for everyone.

**Note specifics, not generalities.** Mention specific instances, statements, body language, and phrasing. Use "I" statements. For example, "When you said X as the defendant's attorney, it made me as the plaintiff angry and I decided to withhold information about the transaction."

**In suggesting areas for development, give alternatives.** Suggest ways that the negotiator could have handled the situation differently. For example, "Rather than walk out when I suggested that our expert examine your books and records, you might have

said that this is a very sensitive area for your management, and asked whether there was another possible source of the information."

### **Evaluation**

I will be asking you to fill out an evaluation at the end of the course to provide feedback and help make this course as useful as possible. Of course, your comments, concerns and questions are always welcome at any point during the course. It is your responsibility to raise with me any problems or confusion you have about the course, its conduct or content.

### **Preliminary Assignment for Class 1:**

- Read Syllabus (available on TWEN).
- Read *Negotiation Genius* Parts I & II.
- Review Model Rules of Professional Conduct 4.1, 1.6, and 8.4 (available on TWEN), including any Comments that appear relevant to negotiation.
- Read ABA Formal Opinion 06-0439 (available on TWEN).
- Complete first Journal assignment (letter to your future self) to hand in at the start of class.

### **Class 1 Overview, Negotiation Basics**

2:30	2:45	Introduction and overview
2:45	3:15	Ethics in Negotiation
3:15	4:00	<u>Prisoner's Dilemma</u>
4:00	4:15	Break
4:15	4:30	Prep for <u>Model A</u>
4:30	5:15	Negotiate <u>Model A</u>
5:15	6:00	Debrief <u>Model A</u>
6:00	6:15	Peer Evaluation <u>Model A</u>
6:15	6:30	Prepare for Day 2

### **Homework:**

- Read roles for Timber Harvest, Bowling Ball and The Frisbee Dispute.



## **Class 2 – Investigative Negotiation, Negotiator Mistakes, Claiming and Creating Value**

8:30	8:45	Review of Day 1
8:45	9:15	Claiming Value/Distributive Negotiation
9:15	9:30	Prepare for <u>Timber Harvest</u>
9:30	10:00	Negotiate <u>Timber Harvest</u>
10:00	10:15	Break
10:15	10:30	Debrief <u>Timber Harvest</u>
10:30	10:45	Peer Evaluation <u>Timber Harvest</u>
10:45	11:15	Common Negotiator Mistakes
11:15	11:45	Investigative Negotiation
11:45	12:00	Prepare for <u>Bowling Ball</u>
12:00	1:00	Lunch
1:00	2:00	Negotiate <u>Bowling Ball</u>
2:00	2:45	Debrief <u>Bowling Ball</u>
2:45	3:00	Peer Evaluation <u>Bowling Ball</u>
3:00	3:15	Break
3:15	4:15	Creating Value/Integrative Negotiation
4:15	5:15	Negotiate <u>Frisbee Dispute</u>
5:15	6:00	Debrief <u>Frisbee Dispute</u>
6:00	6:15	Peer Evaluation <u>Frisbee Dispute</u>
6:15	6:30	Preview of Assignments

## Homework

- Read Part III of *Negotiation Genius*.
- Read Water Circle.
- Read your Chuck's Wagon, FG&T and Metropolitan Water roles.
- Submit your journals for Model A, Timber Harvest, The Frisbee Dispute and Bowling Ball by *Wednesday, February 7<sup>th</sup> at 9:00 a.m.*
- Listen to The Moth Radio Hour: "*Guilty*" by Danusia Trevino found on the Web Links on TWEN; follow the instructions for the Forum on TWEN and submit Forum entry by *Wednesday, February 14<sup>th</sup> at 9:00 a.m.*
- Negotiate something. Find something to negotiate and bring your story into class for possible discussion.

## Class 3 – Negotiating in the Real World

2:30	3:00	Negotiation Ethics Revisited, Guest Professor Larry Cohen
3:00	3:15	Recap of personal negotiation experience since last class
3:15	3:30	Prepare <u>Chuck's Wagon</u> (with client)
3:30	4:30	Negotiate <u>Chuck's Wagon</u>
4:30	4:45	Break
4:45	5:00	Client/Attorney Evaluation <u>Chuck's Wagon</u>
5:00	5:45	Debrief <u>Chuck's Wagon</u>
5:45	6:15	Strategies of Influence and Framing
6:15	6:30	Prepare for Day 4

## Homework:

- Review Water Circle, FG&T & Metropolitan Water.

## **Class 4 – Multi-party Negotiation, Systems & Relationships, Creativity, Power and Gender in Negotiations**

8:30	8:45	Review and overview of the day
8:45	9:00	Logrolling and other approaches to Complex Negotiations
9:00	9:30	<u>The Water Circle</u>
9:30	10:00	Debrief <u>Water Circle</u>
10:00	10:15	Break
10:15	10:45	Informal Conversations for <u>FG&amp;T Tower</u>
10:45	12:00	Negotiate <u>FG&amp;T Tower</u>
12:00	1:00	Lunch
1:00	1:45	Debrief <u>FG&amp;T Tower</u>
1:45	2:15	Creativity in Negotiation
2:15	2:30	Break
2:30	3:00	Power and Gender in Negotiation
3:00	3:30	Prepare <u>Metropolitan Water</u>
3:30	4:30	Negotiate <u>Metropolitan Water</u>
4:30	5:00	Debrief <u>Metropolitan Water</u>
5:00	5:15	Break
5:15	5:30	Professional Development
5:30	6:00	Negotiation in Mediation and Legal Practice/Concluding Comments
6:00	6:30	Course Evaluation

**Homework:**

- Submit your journals for Chuck's Wagon, Water Circle, FG&T & Metropolitan Water by Friday, *February 23<sup>rd</sup>* at 9:00 a.m.
- Sign up for one Final Negotiation slot on TWEN. There are three time slots on February 21<sup>st</sup> and three time slots on February 27<sup>th</sup>.
- Prepare Final Journal and submit by *Monday, March 2<sup>nd</sup>* at 9:00 a.m.