

**SYLLABUS**  
**NEGOTIATIONS 363A**

Western State College of Law    Professor Paul Taylor Smith, Esq.  
Fall 2016                                    Telephone: 714-381-2258  
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**COURSE COVERAGE & OBJECTIVES:**

This is course in the theory, practice, science, and art of legal negotiations. The course develops individual and group interpersonal skills in oral presentation and advocacy, effective communication skills, client service skills, as well as the evaluation of legal, economic, and social strengths and weaknesses of a case in order to persuade others. It also emphasizes professional competency and ethical obligations in client representation.

**COURSE TEXTS:**

Advanced Negotiation and Mediation Theory and Practice, a realistic integrated approach. 2nd ed.  
by Paul J. Zwier and Thomas F. Guemsey

Various problem scenarios distributed in class.

**ATTENDANCE, CLASS PARTICIPATION, AND GRADING:**

The first third of the course consist of lectures covering the week's reading assignment combined with in-class demonstrations. The remaining two-thirds of the class will consist of live in-class simulations.

The simulations will be distributed prior to each class. *Students should spend at least two hours prior to class preparing for a simulation.* Consequently, class attendance is very important and any student who misses more than two class sessions will be dropped.

In addition, students will be expected to expend an additional one hour per week reflecting upon and completing a Preparation and Planning Worksheet (Appendix A of the textbook, copy attached) and another hour per week reflecting upon and completing a Post Negotiation Worksheet (Appendix B of the textbook, copy attached). Students are expected to maintain these documents in a notebook which will be examined at the conclusion of the class and will constitute 10 percent of the course grade.

Preparation and active participation in the negotiation simulations will constitute 40 percent of the student's grade. Each student must perform an opening statement satisfactory for 5 percent of the grade.

The remaining 45 percent of the grade will be determined by a written final examination.

#### **IN-CLASS SIMULATIONS:**

Regarding the in-class simulations, these will generally involve student-lawyers being pitted on different sides of an issue. The lawyers for one side will receive information not available to lawyers on the other side, and vice versa. Students must not allow those on the other to have access to this confidential material, as it would provide an unfair bargaining advantage. This means that if a student were to share confidential information, he or she could be giving it to someone who would then directly use it against him or her to negatively affect his or her performance (and ultimately his or her grade).

#### **READING ASSIGNMENTS:**

Below is a listing of weekly reading assignments for the course. This syllabus is intended to be fluid and acts as a guideline. You are responsible to keep track of where we are in class and to continue reading ahead accordingly (approximately one assignment ahead). The pages listed for each assignment refer to the textbook, unless indicated otherwise.

<b>SESSION NO.:</b>	<b>DATE:</b>	<b>READING:</b>
1	8-24-16	CHAPTERS 1 and 2
2	8-31-16	CHAPTER 3, 4, and 5
3	9-7-16	CHAPTERS 6, 7, and 8
4	9-14-16	10 and 12
5	9-21-16	NEGOTIATION EXERCISE
6	9-28-16	NEGOTIATION EXERCISE
7	10-5-16	NEGOTIATION EXERCISE
8	10-12-16	NEGOTIATION EXERCISE
9	10-19-16	NEGOTIATION EXERCISE

10	10-26-16	NEGOTIATION EXERCISE
11	11-2-16	NEGOTIATION EXERCISE
12	11-9-16	NEGOTIATION EXERCISE
13	11-16-16	NEGOTIATION EXERCISE
14	11-23-16	FINAL EXAMINATION REVIEW
		FINAL EXAMINATION AS POSTED

### **DISABILITY SERVICES STATEMENT:**

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu). When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at [csheppard@wsulaw.edu](mailto:csheppard@wsulaw.edu) or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

## **Western State College of Law – Programmatic Learning Outcomes**

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

**(1) Doctrinal Knowledge**

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

**(2) Practice Skills**

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

**(3) Legal Analysis**

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

**(4) Legal Research**

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

**(5) Communication**

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

**(6) Advocacy of Legal Argument**

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

**(7) Client Sensitivity and Cultural Competency**

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

**(8) Legal Ethics**

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

## **Argosy University**

### **Institutional Learning Outcomes:**

#### **1. Analytical Reasoning**

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

#### **2. Effective Communication**

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

#### **3. Information Competency**

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

#### **4. Interpersonal Effectiveness**

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

#### **5. Personal and Professional Integrity and Ethical Behavior**

Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

#### **6. Professional Competence**

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

# APPENDIX A

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## PREPARATION AND PLANNING WORKSHEET

### *Your goals*

- What do you wish to accomplish?
- What are you willing to accept?

### *Their goals*

- What do you believe the other party seeks to accomplish?
- What do you believe the other party would be willing to accept?

### *Adversarial or problem-solving or a combination?*

- What advantages do each strategy have in this particular negotiation?
- If you are going to approach the negotiation from an adversarial perspective, what is your bottom line at this point?
- What will you use as a starting position?
- What facts do you have that might indicate
  - the likely starting position of the other side?
  - the likely bottom line of the other side?
- Can you plot the potential bargaining ranges on each side?
- **What information do you have available that would suggest the other side's probable strategy (adversarial, problem-solving, or some mix)?**
  - What facts do you have that might indicate
    - the underlying needs, interests, and desires of the other side?
    - the probable proposals the other side might make?
- **Are you aware of any social or psychological facts that might have an impact on this negotiation?**



Appendix A

— If you are willing to shift strategy during the negotiation, what factors will motivate you to switch? How will you make the switch?

For example, if you wish to move from adversarial to problem-solving, what actions can you plan to take to increase trust or decrease the risk associated with problem-solving?

— What information can you seek from sources other than a face-to-face meeting with the other person?

— Is this negotiation best accomplished face-to-face, by telephone, by letter, or some combination? Why?

— If the negotiation is face-to-face, where will it take place? Why?

— If you control the setting of the negotiation, how will you arrange the location?

— How long will the negotiation take? Why?

— In this particular phase of the negotiation do you seek to accomplish all of your goals or do you have a more limited purpose? For example, is this meeting only to obtain information or merely to begin developing a rapport?

— Are there any conventions or controlling principles you need to consider in this negotiation?

— How will you establish the agenda?

— How will you establish what to negotiate?

— How will you establish the manner in which you negotiate?

— What type of ice-breaking will you use, if any? Why?

— What information do you need to get from the other person? Why?

— How will you get this information?

— What questions will you ask to get information from the other person?

— In what order will you ask the questions?

— What information is the other side likely to seek from you?

— What information is the other side likely to try and avoid giving you?

— What will you do if the other person asks you for information you do not want to reveal?

— What will you do if the person refuses to give you a piece of information either by blocking or outright refusal?

— What will you do if the person tells you what you know to be a lie?

— What information do you need to give the other side and how will you give it?

— **What type of persuasive statements will you make?**

— Can you identify objective criteria that support the likely positions you will take or proposed solutions you will make?

— What are the possible criteria to be used by the other side?

— How will you respond to them?

— What are the details of your persuasive elements?

— Can you make your persuasive statements multidimensional? balanced? emphatic?

— Are there any points that must be subtle?

— **Do you anticipate any threats?**

— How will you respond to threats?

— **What type of concessions are you willing to consider?**

— What will you need to convince you a concession is appropriate?

— **How will you respond if any of the following tactics is used against you?**

Anger

Aggression

Boulwareism

Uneven number of negotiators

False demands

Attempts to get you to make the first offer

Attempts to get you to negotiate against yourself

Time pressure

Appendix A

- Will you use any of these tactics? Why?
- If it appears you are going to deadlock, what might you do?
- When will you likely end this negotiation?
- How will you likely end this negotiation?
- Is one of your goals to monitor how the settlement is working?
  - If so, how will this be done?
  - Who will report to whom about what?
  - What happens if they don't report?
  - What happens if a dispute arises?
- Do the parties want to decide now on how future disputes will be resolved?

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# APPENDIX B

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## POST-NEGOTIATION WORKSHEET

Did you accomplish your goals? Why? Why not?

Were you able to set the tone that you desired for the negotiation? Why or why not?

Did you control the agenda? Why or why not?

Did you find as much information as you wanted? Why or why not?

Did you reveal too much information? Why or why not?

Did you fail to reveal information you should have? Why or why not?

If you did not agree, was it appropriate given the context of this particular negotiation? Why or why not?

If you have deadlocked, what might you be able to do to break that deadlock?

If you have deadlocked, might any of the issues in dispute profit from mediation?

Would you want a neutral facilitative mediator or an evaluative mediator?

If you agreed, is the result fair, just, and equitable from everyone's perspective? Why or why not?

For each stage of the negotiation process you conducted, what did you learn from this negotiation?

Preparation and Planning

Ice-Breaking

Agenda Control

Information Bargaining

Offers/Demands/Proposals

Persuasion

Concessions/Reformulations

Crisis

Closing

Memorialization

What is the one thing you will do differently in the next negotiation? Why?

will be resolved?