

Fall 2020 NEGOTIATION SYLLABUS Law 642

Professor Valery C. Behan

valbehan@siu.edu

Tues-Thurs, 10:30 am - 11:45 am

Online

1. Course Overview:

Welcome to negotiations! The skills you will learn (or hone) and practice in this class are ones that you can use for the rest of your life. Nearly every decision you make *with* another person requires negotiating, from deciding where to eat lunch together, to how much you'll pay to buy a car or a house. Negotiation is at play even in common-place interactions with strangers, like in allowing a vehicle in the next lane to merge, or buying something off of craigslist. I believe all lawyers and law students would benefit from negotiation training, and personally found it to be the most useful class I took in law school.

As lawyers you will invariably negotiate much more than you will ever litigate. Most criminal matters are resolved through guilty pleas, and most civil cases are settled before trial. You will negotiate with opposing counsel many times more than you will ever face him/her in a courtroom. As a practicing attorney you will also need to negotiate with your own clients and even with the other attorneys and personnel in your own office.

2. Course Philosophy/ Objectives:

You will be learning the theory behind effective negotiation, but more importantly you will be implementing/practicing the skills and learning from one another's successes and mistakes. (Most Thursdays we discuss theory and Tuesdays are usually reserved for practice.) In addition to reading about and watching others negotiate, each of you will participate in four practice and five graded negotiations. For those who are not comfortable negotiating, these exercises should give you more confidence. For those who are already skilled negotiators the goal is to hone and improve upon these skills. Among other things, the exercises allow each student to learn for him/herself the importance of preparation, of setting high but defensible goals, of asking questions, of recognizing when to compromise, and of maintaining personal integrity and professional courtesy.

Conflict is inherent in negotiation, and the law school setting adds further *competition for grades*. This approximates the conflict and *competition for money* in the real world, but it doesn't follow that this must be unpleasant. It makes things exciting! Try not to give or take offense (don't be either a jerk or a whiner); and, like actors playing a role, don't take what happens during a negotiation personally. Remember you will be interacting with the same students throughout the semester, just as in the real world you will likely negotiate with the same opposing counsel in future negotiations. Effective negotiators (cooperative or aggressive) always treat each other with respect and courtesy. I want full effort but please don't be *full of yourself*. Keep in mind

that each of your graded exercises is only worth appx. **11%** of your grade. Remember to be PREPARED but also try to have FUN!

3. Course Materials:

The required texts are: (1) *Effective Legal Negotiation and Settlement*, Eighth Ed. (2016) Carolina Academic Press, by Charles B. Craver (either the ebook or paperback); and (2) *Getting To Yes*, by Roger Fisher, William L. Ury and Bruce Patton (Penguin Books, May 3, 2011) or any addition.

4. Audio visual Materials & Equipment:

I debated whether it was better to meet in person or via the internet, but for the sake of everyone's health and because we wouldn't be able to see each other's faces if we were in-person but wearing masks, I decided on the latter. The second half of last semester we were able to have class via Zoom and the students had no problem negotiating with each other via Zoom, other video chat platform, telephone, or email.

Since our class will be meeting exclusively via Zoom this semester, **it is imperative that you have a good internet connection.** You will be required to **keep your camera on for class** (unless of course you need to use the bathroom, etc.). This will make it seem more like we are meeting together. Please set up a designated place where you are comfortable having the camera on or set up a virtual background.

Although only once is required, I highly recommend that you either audio or video record* each of your negotiations, especially those that are graded. Reviewing a recording is one of the best ways to learn from an exercise. This is also the only way to fully protect yourself if a partner should claim you said or did something unethical during an exercise. You do **not** need to send me a copy of the recording(s) but if you would like me to review any I'd be happy to do so. (*Make sure the other party is informed if you decide to record a negotiation.)

5. Attendance:

Attendance is critical for this class. *Most* (but not all) Tuesdays you will be doing Negotiation Exercises *out of class and attendance will not be taken.* Most Thursdays we will review the exercise from that week and discuss the technique and theory *that you will thereafter be expected to apply* in your future negotiations. Attendance is taken only on days we have Zoom class scheduled or if there is an assignment given in lieu of class. Since we usually only meet once a week you . . .

CANNOT HAVE MORE THAN 3 ABSENCES WITHOUT PENALTY.

Each day missed, starting with the 4th absence, will result in a .10 reduction in one's final grade. (Exceptions will be made for grave injury or illness.) Our first Lab period on Tuesday, 9/1/2020 we will first meet together on Zoom, then in breakout groups. After that, other days that are designated as a "LAB" period on the schedule are *reserved for you to negotiate if you wish to*. PLEASE KEEP this class time **TUESDAYS clear of other appointments**, so as to always have this time to negotiate AND in case of schedule changes or for makeup classes. I will always be available for questions about an exercise during Tuesday class times so feel free to call me with any questions then.

6. Classroom Behavior:

Behavior in class and during the negotiation exercises must conform to the Honor Code: "Law students are expected to uphold the standards of professional conduct that are reflected in this Code, which includes obligations to be honest, [and] to act in a manner that is civil toward others..." (Introduction, SIU School of Law Honor Code.) Any student who is dishonest or not civil will be asked to leave the classroom and will be counted absent for that day.

7. Grading: 450 Points Possible

- a. **Appx. 45%** of your grade (**200 points**) is based on your performance in four of the five **graded exercises**. (The lowest exercise score will be dropped). For each exercise, the student with the highest raw score for his/her side will get 50 points. The next highest raw score will receive 48 points and so on. Record your score right onto the TWEN drop box by Wednesday @ 5:00 pm. If there is a score sheet, fill in the details of your agreement, double check your math, and also attach that to the drop box by Wednesday @ 5:00 pm.

Example of Scoring/Ranking of Graded Exercises

Scores Ranked	Side A	Side B
<i>1st (highest score)</i>	50	50
<i>2nd</i>	48	48
<i>3rd</i>	46	46
<i>4th</i>	44	44
<i>5th</i>	42	42
<i>6th Or No Settlement</i>	40	40

**If two or more students tie or are within 5 raw points of each other they will share the same rank/score.*

***Note: If we have an odd number of people in our class you may need to negotiate with me or a person who has taken this class before and has agreed to participate in an exercise for pro bono credit. This person will not be ranked.*

- b. **Appx. 45%** of your grade (**200 points**) is based upon your performance on the **FINAL EXAMINATION**. You will be tested from lectures (including guest lectures) and your readings. It will consist of some matching and multiple choice, mostly short answers, and short summaries. If you do the READINGS and TAKE NOTES IN CLASS, it is not difficult. **FINAL EXAM DATE= TBD (on TWEN open book)**.
 - c. **Appx. 5%** of your grade (**23 points**) will come from your writing across the curriculum (WAC) assignments: (1) **1 point** possible for your “Negotiate Anything with Anyone” Summary; (2) **4 points** possible for your *Selma* paper; and **18 points** possible for your combined Self and Peer assessments. (Explained in Section 8 below.)
 - d. **Appx. 2.5%** of your grade (**11 points**) will be given for participating in an **Inter-School Negotiation** and fulfilling all of its’ requirements (Date and Details to follow).
 - e. **Appx. 2.5%** of your grade (**11 points**) will be given for the **BAR-TYPE ASSESSMENT** (Date and Details to follow).
 - f. **Reading Quizzes for Extra Credit: (?? Points)**. Pop quizzes may be given at the beginning of class from time to time to make sure you have read the material for the day. They will only be worth from 1-5 points each but will be added on to your final score.
-

8. Assessments:

Self-Assessments (SAs) and Peer-Assessments (PAs) **are helpful tools to improve one’s negotiating skills**. After each exercise you are **required to post onto TWEN: (1) a Self-Assessment (that only I can view) written right onto the drop box itself at the same place you write in your score and attach your scoresheet (if there is one for that exercise) on Wednesday by 5:00 pm; and (2) a separate Peer Assessment (PA) (that all may view) posted on the FORUM discussion for that week**. These may be posted anytime Wednesday (up until midnight) for full credit. A late SA or PA will get half credit. One not posted in the correct place or manner will be reduced by 1/2 point.

- (a) **Self-Assessments (SA)** (9 Total= 1 after each of the 4 ungraded and 5 graded exercises; each worth 1 point). Again, TYPE each SA right ONTO the DROPBOX for the exercise (those not typed onto the drop box will be -.5 points). A short paragraph is all that is needed, but it **should reflect what you have learned from the exercise**. At minimum each SA **must include: your name, your side, your results (or total points if there is a scoresheet) for the exercise and who you negotiated with, then: (1) how you prepared for the negotiation; (2) what your specific goals were for each item to be negotiated; (3) what your bottom line/ or walk-away point was for each item; (4) what you did well; and (5) what you could improve upon**.

Self-Assessment Example: “Ex. A. Val Behan, defendant’s rep., total points 250; partner John Doe. 1) How I prepared for the negotiation: I looked up comparable settlements for this type of injury and researched the law on comparative fault in the jurisdiction. 2) My goal for the settlement amount was for the defendant (my client) to pay no more than \$300,000 and I also

wanted the plaintiff to sign a non-disclosure agreement. 3) My client's absolute bottom line/walk-away point was for him to pay \$400,000 with a non-disclosure agreement. 4). What I did well-- Near the start of negotiations, I used bracketing successfully; in other words, I was also able to give a counteroffer that placed my goal exactly in the middle of their initial offer and mine. They asked for \$500 K, my goal was \$300 K, so I started off offering \$100 K (and I had figures to back up that amount). 5). Things I could improve--a couple of times I think I made two concessions in a row, and I was nervous and didn't hold my ground on X; next time I'll plan out my concessions ahead of time, and"

(b) Peer Assessments (PAs) are brief entries you should post onto our class TWEN forum page critiquing the person you negotiated with. (9 Total= 1 after each of the 4 ungraded and 5 graded exercises; each worth 1 point).

A discussion will be labeled after each exercise (e.g., *Peer Assessments for Practice Exercise #1*). Identify: your name/side and the name of your opponent/her side. Then list: (1) **what your opponent did well during the negotiation** (*at least one thing*); and (2) **give some suggestions for improvement** (*at least 1 mistake they made/ something to improve upon*).

**Note: Many of us are uncomfortable giving criticism (even constructive criticism) to others, but this is very important! You're the only one who has seen the negotiation and are in the unique position of helping your opponent improve. So if you write something like, "nothing can be improved—it was great" you will get a .5 point reduction.*

Peer Assessment Example: "My name--defendant. Opponent's name--plaintiff. 1. O did an excellent job making me feel comfortable, asking questions about my underlying interests, and listening. O also deflected my question about X which 2. As for suggestions, O may want to be watch out for verbal leaks. At one point he said, "I don't think I could go much higher than Y" so I knew he could go higher He could also"

9. Workload:

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), "a "credit hour" is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time." A 50-minute classroom hour is considered an hour. This is a 3-credit hour class that meets twice a week (two 75 minute blocks). As stated earlier, for this class **most Tuesday sessions will be Lab periods** in which you actually negotiate. Negotiations normally last about the same time as a class period or approximately 75 minutes, but sometimes they can last longer. The amount of assigned reading for class, and out of class preparation for the negotiation exercises (including the self-assessments and the peer assessments) should take you at least 3 hours for each, or 6 hours per week. This added to class/lab time would total 9 hours per week.

10. RULES for ALL NEGOTIATION EXERCISES:

- a. Before negotiating an exercise, you may NOT READ the other sides' Confidential Info. You may not discuss anything regarding your side's Confidential Info with any student who represents the other side. **Nor may you discuss it with anyone who has taken the class before.** A violation of this rule will result in a failing grade for the class and disciplinary action.
- b. While negotiating do not show your Confidential Information sheet(s) to opponents; however, you may disclose some of the factual/legal information set forth in your Confidential Information if it helps your client in the negotiation.
- c. While negotiating neither side may disclose any of the specific information pertaining to their side's scoring system. (They may say that one item is valued twice as much by their client than another item, but they may not disclose that any item is worth "x" points.)
- d. After final terms are reached, negotiators may read Opponent's Confidential Info. & Scoring System Info. With this information you can both try to expand the pie. (*This means that without lowering the points of either side, one or both sides are able to figure out a distribution of items/terms so that at least one side gets--but ideally both sides get--more total points.*)
- e. Negotiators may not make any knowing misrepresentations of material law or fact during their interactions. Representations concerning their side's value system (what their client wants/does not want) or what they are willing to accept (settlement intentions) shall not be considered representations of a material fact. Such puffing and embellishment is considered non-material information [Model Rule 4.1]. Anyone who violates this rule will receive the lowest score for the exercise in which the representation is made, and I may increase their opponents' score at my discretion.
- f. Unless otherwise directed, do not discuss settlement talks or any agreement achieved with any other Negotiation Course members, except your partner or opponents, until the time limit for all of the groups has expired.
- g. After a negotiation exercise, the "attorneys" must sign a joint agreement including all the terms. It does NOT NEED TO BE TURNED IN, but must be kept in case of disagreement as to the terms and/or point calculation. It is for your own protection and so that you can get used to documenting and attesting to the terms agreed to after every negotiation in the real world too. The negotiation is not considered finished until the terms are initialed by each party's representative.

- h. All negotiations must be completed by 3 pm on each Wednesday. Scores or score sheets (and self-assessments) are to be submitted by 5 pm. [2 points will be deducted from your final exercise score or your score/score sheet is posted AFTER 5 pm.]
- i. **Remember that a bad deal is worse than no deal!** If during a negotiation you are at or near your client's bottom line, you will probably get the lowest score on the negotiation. Therefore, it behooves you to tell the other side that if you cannot get more for your client then you will take a non-settlement. (This would be the same score you'd likely get anyway, but would also put them at the lowest score for their side.) If you are serious about this option, the other party will likely give some more concessions, since they don't want to get the lowest score either. (With some exercises there are built in options for non-settlement; for example, you may be able to flip a coin or roll dice for your result. If this is the case, make sure your settlement is better than what you've calculated your worst result would be if you decided to roll/flip/etc.)
- j. If there is no settlement the parties still must initial each other's final offers and each must POST his/her final offer. Please do this right on the drop box itself, labeling your name and side, the opposing counsel's name, writing NON SETTLEMENT and detailing what your last offer was and what points you *would have* received for it had it been accepted.
- k. Occasionally a party might hold out for ridiculously high points or a dollar amount much higher than anyone else on the plaintiff/prosecution side; or an insanely low dollar amount (much lower payout) or otherwise demand many more points than anyone else on the defense/defendant's side. If this party refuses to budge even after a non-settlement is proposed by opposing counsel; and if as per rule j. they both initial the final offers, and the other party had a reasonable offer and takes a non-settlement; then, **in my discretion I may** award the person who had the reasonable final offer the lower of (i) the points his/her last offer would have garnered OR (ii) the median grade for the exercise. Such action would not affect the ranking of any other students.

NOTE 1: If you wish to negotiate in person, you may do so as long as you follow state guidelines as to mask wearing and social distancing. You can call the office to reserve a room at the law school or meet at any pre-arranged location. You can negotiate via email, telephone or video conferencing as well.

*NOTE 2: Besides our first Lab period you are not required to negotiate Tuesdays from 10:30 to 11:45, but **keep in mind that it is a time that you, me, and your classmates have free in our schedules.** (Remember--I WANT YOU TO KEEP THIS TIME FREE OF ALL OTHER APPOINTMENTS, to negotiate if necessary or if we need a make-up class for some reason.) But since partners will be assigned and exercises given out on Thursdays, it is perfectly fine to negotiate with your partner any time after class on Thursday (Thursday pm, Friday, Saturday, Sunday, Monday, Tuesday, or even Wednesday as long as you finish by 3 pm).*

*NOTE 3: Please **check email each day** after an exercise is assigned **and respond quickly to your partner's requests to meet.** Also be considerate of each other's time. No negotiation need go longer than 1.5 hours or so.*

11. Contacting Me:

You can **contact me anytime** via email at valbehan@siu.edu. I usually respond immediately or within an hour. I am also available to meet via Zoom or telephone. In an emergency or for questions during an exercise you can text or call me at **618-521-1847**.

12. Notice of Recording Policies:

You are not authorized to make your own recording of this class, and classes will not be recorded. I am of course willing to provide a suitable substitute for ADA compliance purposes, or would allow it if DSS deems it necessary (see 15. below) as long as I am informed.

It is an Honor Code violation to create or distribute recordings when the instructor has prohibited either action [Honor Code I.E.1.g].

13. Emergency Procedures:

We ask that you become familiar with Emergency Preparedness @ SIU. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit: <http://emergency.siu.edu/>.

14. Disability Policy:

SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval please contact DSS immediately at 618-453-5738 or disabilityservices.siu.edu. You may request accommodations at any time, but timely requests help to insure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreements for each course to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations. Accommodation request and renewal forms can be found here: <https://law.siu.edu/academics/>.

15. Saluki Cares:

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a

culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-2461, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618- 453-3135.

16. Covid-19:

As a condition of on-campus enrollment, all SIUC students are required to engage in safe behaviors to avoid the spread of COVID-19, including the requirement that all students wear a mask in campus buildings, including classrooms, laboratories, and studios when others are present, regardless of social distancing. Students are expected to follow physical or social distancing guidelines by keeping at least 6 feet from others, and practicing good hand hygiene. Failure to comply with this policy may result in dismissal from the current class session. If the student refuses to leave the classroom after being dismissed, the student may be referred to the Office of Student Rights and Responsibilities. SIUC will follow federal, state and county public health recommendations and mandates in all decisions relating to university operation. Students should regularly review the link for the SIUC COVID-19 response: <https://siu.edu/coronavirus/>.

17. See also Fall 2020 Syllabus Attachment:

https://pvcaa.siu.edu/_common/documents/provost-memos/syllabus-attachment-fall-2020.pdf

18. SCHEDULE WKS 1-7 Fall 2020: (Posted separately under Syllabus Tab)